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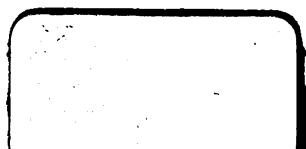
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HISTORY
OF THE
PARTITION OF THE LENNOX.

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HISTORY

OF THE

PARTITION OF THE LENNOX.

By MARK NAPIER, Esq.

ADVOCATE.



WILLIAM BLACKWOOD AND SONS, EDINBURGH;
AND THOMAS CADELL, LONDON.
M.DCCC.XXXV.



P R E F A C E.

WHO is Representative of Duncan eighth and last of the ancient Earls of "the Levenax?" This question, which involves the right to the dignity, has never been fully and fairly considered. Indeed the fate of this interesting Comitatus is very slightly and erroneously recorded by the best Historians of Scotland. It has been asserted that the honours were forfeited in the person of Earl Duncan, and the Lennox annexed to the Crown. Yet it can be proved that those honours were taken up by service to the very Earl against whom forfeiture has been alleged; and that the Comitatus itself descended by right of inheritance through his heirs-general for centuries. The same Historians had to record the transmission of the dignity through the Stewarts of Dernely, and therefore found it necessary to assume a new creation in favour of that family. Yet it can be distinctly proved that the race of Dernely itself never pretended that such was the case, but claimed and kept the title of Earls of Lennox upon the pretension of their right of blood alone.

The only attempts hitherto made to clear this history are by legal antiquaries, who have taken but a partial view of the subject, and the nature of whose compilations are neither fitted nor intended for general circulation. Mr Hamilton, in his very able Case for Woodhead,* afforded a copious repertory of Lennox antiquities, drawn from various antiquarian sources, among which he acknowledges his obligations to Mr Riddell for the communication of valuable notices derived from researches in the Register-House. But this elaborate compilation was got up for the sole purpose of supporting a pretension utterly untenable, and Mr Hamilton's labours, therefore, have only tended still further to mislead other writers as to the history of the Lennox. An older case (now rarely to be met with) was printed sometime in last century, to support the claim for Haldane of Gleneagles.† This claim, being *ex parte* very plausible, is entitled to a consideration which that for Woodhead can never obtain. But the printed case alluded to, though the work of a distinguished lawyer, is both meager and inaccurate, and affords no history sufficient to enable the reader to appreciate the respective merits of all the competing claims.

Mr John Riddell, Advocate, the most competent perhaps to have occupied such a field, was not induced to do

* "Case of Margaret Lennox of Woodhead in relation to the Title, Honours, and Dignity of the ancient Earls of Levenax or Lennox. Edinburgh, 1813." Drawn up by Robert Hamilton, Esq. Advocate.

† "Memorial relative to the succession to the ancient Earls of Levenax." Without date or signature, but drawn up by Mr Wedderburn, afterwards Lord Chancellor Loughborough.

so even by some new lights he obtained on the subject, many years ago, in the course of his minute antiquarian researches. The discoveries alluded to were in favour of the claim for Napier of Merchiston, but no Case for that branch of the Lennox coheirs has hitherto been compiled, although their claim, to say the least of it, appears to be far more tenable than any other that can be advanced. Mr Riddell, indeed, published in 1828, some sheets of antiquarian controversy, relative to the House of Hamilton, and entitled "Reply to the Misstatements of Dr Hamilton of Bardowie," in the appendix to which he inserted a "Statement in reference to the late pretensions of the family of Lennox of Woodhead, to the Honours and Representation of the ancient Earls of Lennox." This statement is sufficiently conclusive against Woodhead, and also discloses a document positively instructing the circumstance, which so obviously vitiates that pretension. But the triumph was of minor importance in clearing the history of the Lennox succession. No one can read the Case for Woodhead without perceiving that it contains the materials of its own refutation,—the charters founded on proving, most obviously, the very fact which Mr Riddell more directly established.

The same learned antiquary, in a recent publication,* now for the first time lays before the public the evidence for Merchiston, which he discovered in the Register-House more than twenty years ago. But certainly it

* "Tracts Legal and Historical," &c. containing *inter alia*, "Observations upon the Representation of the Rusky and Lennox Families, and other points in Mr Napier's Memoirs of Merchiston." 1835.

could not have made its appearance in a less satisfactory shape for those who are really anxious to ascertain the true state of the question between the competitors for the Earldom of Lennox. His views of that evidence have, it seems, been in some degree altered by other evidence he has more recently discovered in favour of Gleneagles, but which, after all, by no means enables him to settle the question even to his own satisfaction. The result of his present publication, so far as concerns the Lennox question, is, to adopt the learned gentleman's own words,—“ a kind of puzzle that is perplexing.”

Under these circumstances, it is hoped that a HISTORY OF THE PARTITION OF THE LENNOX, with an examination of the various claims to the character of heir-general of the Earldom, will, as it is perfectly new, be acceptable to the public. The author regrets that the task had not been undertaken by some one more competent to do it justice, but he has spared no pains to throw light upon the subject. He has diligently perused and considered all the antiquarian compilations, besides examining every original record, public and private, connected with the history of this ancient Earldom, so far as open to his inspection. And in arriving at the conclusion that neither the Case for Gleneagles, nor the more modern pretension put forward on the part of Woodhead, could stand in law before a Case for Merchiston, he trusts the following pages will show that he is supported by legal evidence, and not misled by partial feelings.

The possession of the Merchiston charter-chest, in-

trusted to him by the late Lord Napier, furnished the author with valuable materials for the present undertaking; and he has also to acknowledge his obligations to William Dallas, Esq. W. S. who at all times most obligingly afforded access to inspect such of the Glen-eagles papers as were in his hands.

Mr Riddell must have hastily written the following sentence of his publication alluded to, and, as that gentleman had no intention to mislead, he will thank us for explaining it: "The above view of things, with the relative evidence, the author communicated, at a distant period, to the late Lord Napier, and a few years ago to Mr Mark Napier, Advocate, at his request. He regrets to find that the learned gentleman in his *Memoirs of Merchiston*, which he did not see until published, while he represents Elizabeth Menteith, the Merchiston ancestress, as the eldest coheir of Rusky, instead of standing upon probabilities and presumptions, gives the fact as an absolute certainty, from which he concludes that the Earldom of Lennox is indisputably in her line." * Now the "above view of things, with the relative evidence" here referred to, appears to be ten printed pages of elaborately illustrated matter, (some of it perfectly new) in reference to the Lennox claim, which the author of the *Memoirs* never saw in any shape until recently published. Not that he is so unreasonable as to expect to see a work *before* it is published, but the sentence quoted might convey an erroneous impression, to the effect that he had actually solicited and obtained some such

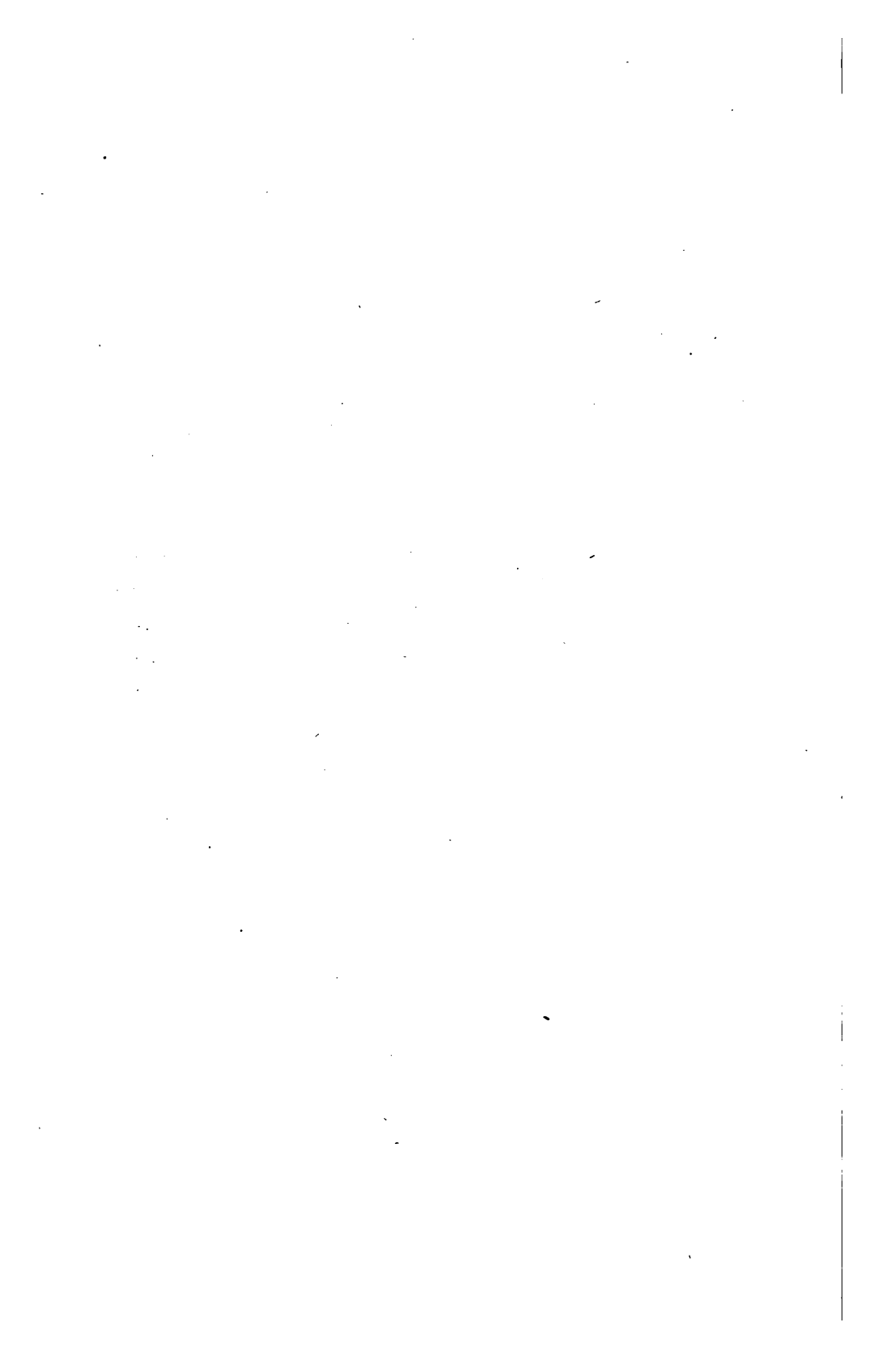
* Tracts, p. 103.

favour from the learned author of the Tracts. The author had long been aware of Mr Riddell's discoveries in the Register-House relative to Merchiston. Several years ago, he was led by that circumstance to consult Mr Riddell, verbally, on the subject of the Lennox case for Napier, which they frequently discussed, and upon one occasion examined some of the Gleneagles papers together. No part of the following history (not contemplated at the time) is the result of these desultory conversations, from which, perhaps, the author did not reap the benefit he ought.

It may be necessary to add a few words in reference to the VINDICATION which forms a supplement to this volume. Mr Riddell, in the preface to his recent work, states that it originated in "a desire to clear up certain points that admitted of illustration, and to bring forward original notices. As every antiquarian knows—amid the fable that obscures Scottish antiquities nearly as greatly as the dearth of record, there is nothing so much wanting in every department as genuine and unexceptionable facts, which often, as our distinguished countryman Lord Hailes has demonstrated, are of far greater importance than the reveries of our writers, and ingenious and speculative inferences." If these excellent principles had really been applied in Mr Riddell's review of the Memoirs of Merchiston, the author, even though convicted of error, would most sincerely and cheerfully have acknowledged the obligation. But the controversial criticism displayed in that learned gentleman's "Observations" is by no means characteristic of the HAILES school of Scottish antiqui-

ties, being composed of antiquarian trifling not justified by its accuracy, and little touches of spleen scarcely redeemed by their wit. It is not this, however, that would have induced the author to vindicate his own labours, which, as they must be open to much substantial criticism, historical and scientific, would be fortunate to escape with no greater shock than what may be received from Mr Riddell's pedigree-picking. But a manifest tendency, throughout the whole critique, to cast suspicion upon certain antiquarian proofs relied upon in the *Memoirs*, and to give rise to vague ideas of old fabrications and forgeries—ideas only deriving weight from being suggested by an antiquary who is understood to be devoted to researches of the kind—seemed imperatively to call for a vindication, which the author has endeavoured to render interesting to the general reader.

EDINBURGH, *June* 1835.



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HISTORY

OF THE

PARTITION OF THE LENNOX.

CHAPTER I.

ANTIQUITY OF THE EARLDOM — INVESTITURES AND LIMITATIONS—FATE OF ALBANY AND LENNOX.

LEVENACHS, or LEVENAUCHEN, a Gaelic term signifying the *field of the smooth stream*, comprehended the original sheriffdom of Dunbarton, a rich and extensive district of Scotland, which has since suffered various dismemberments in favour of the neighbouring counties. The name has assumed the forms of *Levenax*, *Lenax*, and *Lennox*, which latter is the modern appellation.*

At what precise period this district became erected into an Earldom, or *Comitatus*, with all the consequent privileges, has not been accurately determined. Lord Hailes, the father of authentic Scottish history, admits the existence of Earls of Lennox so far back as the twelfth century, but is sceptical as to their reputed descent from a Saxon Lord called *Arkill*, and rejects the theory as belonging to “the ages of conjecture.”† Mr Hamilton, in his Case for Woodhead, says, “Lord Hailes

* See chartulary of Lennox, edited for the Maitland Club by Mr Denniston, and Chalmers' Caledonia, Vol. iii. *Dunbartonshire*.

† Case for the Countess of Sutherland, c. v. sect. x.

is, perhaps, too scrupulous. The first notice of Earls of Lennox he recognizes is in 1238, though they are upon certain record forty years at least before that period, and he admits Donald to be the sixth Earl.* But whoever attempts to convict Lord Hailes of a blunder of the kind, is likely to fall into one himself. It is true that the case for the Countess of Sutherland commences, in its notice of Lennox, with a charter of Alexander II. to Earl Maldowen in 1238, but the very extract which Lord Hailes quotes from that charter, records Earl Maldowen's father, Alwyn, as having been Earl of Lennox also; and, moreover, the same author had previously stated, that "the Earls of Lennox are mentioned, in histories and public deeds, so far back as the *twelfth* century."

Mr Hamilton deduces a theory (adopted by Chalmers) that the first Alwyn was created Earl of Lennox, at a very advanced age, by Malcolm IV. betwixt the years 1159 and 1165,—that his son Alwyn succeeded when so young, that David, Earl of Huntingdon, King William's brother, had been put into possession of the Earldom, or had held it in ward, till Alwyn came of age, which happened before the close of the twelfth century. But there are charters extant which materially affect this theory. 1st, A charter, relating to the church of Campsy, from "*Alwyn, Comes de Levenax, filius et heres Alwini comitis de Levenax, Maldoweni filio et herede nostro concedente.*" 2d, A charter, relating to the same subject, by "*Maldowen, filius et heres comitis Alwini JUNIORIS comitis de Levenax et heredis Alwini SENIORIS comitis de Levenax.*"† These charters, which have no dates, prove that Maldowen was

* Page 2.

† The quotations in the text are from a transcript, which I saw in the Register-House, of the Chartulary of Glasgow.

the son of Alwyn, who was the son of Alwyn, and that the two Alwyns were both at the same time designed Earl of Lennox, probably because the son was *fear* of the Comitatus, while the father was *liferenter*. It would rather appear, then, that the eldest Alwyn was the first Earl of Lennox of his race, but that the district of the Leven had been previously erected into an Earldom in favour of David Earl of Huntingdon, some time between the middle and the close of the twelfth century.

From Alwyn, the Earldom past in lineal male succession as follows :

- | | |
|----------------|--------------|
| I. Alwyn. | IV. Malcolm. |
| II. Alwyn. | V. Malcolm. |
| III. Maldowen. | VI. Donald. |

With Earl Donald the direct male line ceased. He left an only daughter, Margaret, who became Countess of Lennox, and married Walter, son of Allan de Fasselane, her own cousin, and heir-male of her House.*

In consequence of a resignation by Walter and Margaret in 1385, Robert II. granted to their son Duncan, and *his heirs*, a charter of the whole Comitatus. In accordance with the territorial nature of feudal dignities in those times, Walter de Fasselane had obtained the title of Earl of Lennox in right of his spouse ; † and in like manner, upon the resignation of his parents in his favour, Duncan became eighth Earl of Lennox, in his father's lifetime.

Walter de Fasselane, the husband of Margaret of the Levenax, was recognized and designed in royal charters as Earl, simply because he possessed the Comitatus

* See the Lennox Chartulary, and Mr Denniston's preface. The most distinguished of these Earls was Malcolm V., the friend and comrade of Robert Bruce. He was killed at Halidonhill in 1333.

† Sutherland Case, c. v. p. 40.

in right of his wife, there being no limitation of the dignity of this fief to *heirs-male*. The charter of resignation to their son Duncan is equally general, being *Duncan et heredibus suis*.^{*} The next and ruling investiture of the earldom arose out of a family contract between Earl Duncan and the Regent. In the year 1390, Robert Stewart Earl of Menteith and Fife, a younger brother of King Robert III. whose reign then commenced, was the most potent nobleman in Scotland, and, through the indolent temper and weakness of the monarch, was suffered to hold the office of governor of the realm. In 1391, the Earl of Lennox, who had been left a widower, without male issue, but with three daughters, *Isabella*, *Margaret*, and *Elizabeth*, became a party, along with the Earl of Fife, to a curious contract of marriage between his eldest daughter, Isabella, and Sir Murdoch Stewart, the Regent's eldest son. The following are the terms of this contract in modern orthography.

“ This indenture, made at Inchmoryne the 17th day of February, in the year of grace 1391, bears witness, that it is accorded between noble and mighty Lords, Sir Robert Earl of Fife, on the one part, and Sir Duncan Earl of the Levenax, on the other part, in manner as follows:

“ That is to say, that Sir Murthow, son and heir to the foresaid Earl of Fife, shall have to wife, Isabella, the eldest daughter of the said Earl of the Levenax, and shall endow her in the barony of the Redhall, with the appurtenances in tenandry and demayn.

“ *Item*, it is accorded that the said Earl of the Levenax shall resign up in our Lord the King's hand, all his earldom of the Levenax, with the appurtenances, to be infeft again of his said earldom, to him and to his heirs-

* Chartulary of Lennox.

male, gotten or for to be gotten lawfully of his body ; whom failing, to the said Sir Murthow and Isabella, and to the longest liver of them, and to the heirs lawfully to be gotten between them, whom failing, to *the nearest and lawful heirs of the foresaid Earl of the Levenax*. And to the fulfilling of this tailzie, the foresaid Earl of Fife shall purchase the King's assent and Walter Allownson's,* father to the said Earl of the Levenax.

“ *Item*, it is accorded that, in case the said Earl of the Levenax shall happen to have heirs-male of his body, or if he chance to take a wife to himself (*or through a-ventur hym selovyn happyn to be to mary*) and the said Earl of Fife happen to have a marriageable daughter, the said Earl of the Levenax, or his heir-male, shall have to wife that daughter ; and if the said Earl of Fife happens to have no daughter to marry, the said Earl of the Levenax, or his heir-male, shall have to wife a ‘ *nest cosyng*’ of the said Earl of Fife at his assignation, or the said Sir Murdow's, without disparagement to the said Earl of the Levenax, or his heir-male.

“ *Item*, it is accorded that the said Earl of the Levenax and his heir-male (if he any get, as is before said,) shall pay to the said Earl of Fife, or Sir Murthow his son, for the marriage of the said Isabella his daughter, two thousand marks Sterling, proportionally, at reasonable times, as the time happens ; of the which two thousand marks, the foresaid Earl of Fife, or Sir Murthow his son, shall allow to the said Earl of the Levenax, for the marriage of his heir-male, or of himself if it happen in manner before said, a thousand marks Sterling.

* Walter de Fasselane was the son of Aulay or Allan de Fasselane, (an extensive tract of country on the Gairloch, forming the patrimony of this branch,) who was the son of Aulay, fourth son of Alwyn, second Earl of Lennox.

“ Item, it is accorded that the said Earl of the Levenax shall be substitute and depute to the said Earl of Fife, of the justiciaries of the sheriffdoms of Stirling and Dunbarton, of as much as pertains to the Lordship of the Levenax, as long as the Earl of Fife has no justiciaries. And the said Earl of the Levenax shall have the third part of the profit of all that the said Earl of Fife has, and may have, of the justiciaries of the Lordships of the Levenax foresaid.

“ Item, it is accorded that the saids Earl of Fife and Sir Murthow, his son, shall be leal helpers, counsellors, supporters, promoters, and furtherers to the said Earl of the Levenax in all his actions, causes, quarrels him touching, or that may touch, as their own proper causes, for the time of their lives, he living by them and their counsel, and discretion of his own counsel.

“ Item, it is accorded that the said Earl of Fife shall give in marriage one of the daughters of the said Earl of the Levenax, Elizabeth or Margaret, at his own costs, in convenable place, without disparaging of her. And the saids Earl of the Levenax, and Sir Murthow, shall give in marriage the other of his daughters, at their costs.

“ Item, it is accorded that the foresaid Earl of Fife, or Sir Murthow his son, shall make over to the heirs-male to be gotten between the said Sir Murthow and Isabella as much land heritably as the said Earl of the Levenax has now in property in demayn.

*“ The which things above-written leally to keep and to fulfil, without fraud or guile, the foresaids Earls and Sir Murthow have sworn upon the holy Evangel. And to this indenture have set interchangingly their seals, day, year, and place before said.”**

* This contract, in its ancient orthography, is printed in the case for Woodhead. Mr Hamilton observes, “ The original deed is not

Upon the 8th of November 1392, King Robert III. granted a charter under the Great Seal to Earl Duncan of the whole earldom of Levenax, proceeding upon his resignation in terms of the above contract, and containing the limitations then agreed to, which became the ruling investiture.*

About the period of these settlements all the daughters of Earl Duncan were married, and certainly without disparagement to any of them. Isabella, to Sir Murdoch Stewart, the King's nephew; Margaret, to Sir Robert Menteith of Rusky;† and Elizabeth, to Sir John Stewart of Dernely.‡

Under this new investiture Earl Duncan possessed until his death in 1425. He formed no second alliance, nor had he any heir-male of his body who might fulfil the condition of a marriage with the Regent's daughter. The

preserved, but a notarial transcript of it, taken by order of John Lord Dernely, on the 21st of January 1460, is in possession of the Duke of Montrose." P. 9. It will be observed that, in this transcript, made *by order of John Lord Dernely*, Elizabeth, that nobleman's ancestrix, is put before her sister Margaret, the ancestrix of Rusky.

* There is no question or dispute as to the ruling investiture and limitations of the Levenax and its honours. The royal charter "*Duncanano Comiti de Levenax*," is recorded *Reg. Mag. Sig. Rot. Rob.* iii. No. 45, and the words of limitation are, "*Dicto Duncanano et heredibus suis masculis de corpore suo legitime procreatis seu procreandis; quibus forte deficientibus, Murdacho Seneschallo consanguineo nostro carissimo, et Isabelle filie dicti comitis, et eorum diutius viventibus, ac heredibus inter ipsos legitime procreandis; quibus forte deficientibus, veris legitimis et propinquioribus heredibus dicti Duncani quibuscunque.*" It was solely in virtue of this limitation that Lord Dernely assumed the honours in the following century.

† Margaret was married to Sir Murdoch Menteith in 1392. The Gleneagles Case quotes "Sasine in her favour by her husband *penes Ducem de Montrose.*"

‡ See History of the Stewarts, by Andrew Stewart, Esq. M. P.

marriage of Murdoch and Isabella, however, promised to answer all the purposes of that compact, and for ever to unite in one family the earldoms of Lennox, Fife, and Menteith. This lady bestowed upon Murdoch of Albany four sons, Robert, (who died early,) Walter, James, and Alexander, some of whom grew up into such beauty of manhood as to be the admiration of Scotland. In the meanwhile the aggrandizement of Earl Robert had been greatly accelerated by the weakness of his brother, who still suffered him to govern the kingdom, and, at the same time that he created Prince David Duke of Rothsay, bestowed upon the ambitious governor the title of Duke of Albany, these being the first dukedoms erected in Scotland. The captivity of James, only remaining son of Robert III. and the consequent heart-broken death of that aged monarch, quickly followed the supposed murder of the Duke of Rothsay, and left Albany in undisputed possession of the regency, which he maintained for fifteen years thereafter, and even transmitted to his son, the husband of Isabella of the Levenax.

But the dark hour approached when the long restrained vengeance of an injured prince was to burst upon this devoted house. If there be any truth in the surmise that the lingering death of the Prince of Scotland was the deliberate act of his uncle, Duke Robert, and that the subsequent exile and protracted captivity of James, to whom the succession had thus opened, was owing to the interested and powerful intrigues of the same nobleman, the rigour of that monarch to his uncle's family is accounted for. But even without admitting the absolute certainty of the more atrocious charges, there were exasperating circumstances. For many years the late Regent had excited the indignation of the country, oppressed the people with a vicious government, and

cast the royalty of Scotland into shade. Nor was it to be supposed that the crown lands would not suffer from one so determined to acquire, at all hands and all hazards, resources to sustain the enormous aggrandizement of his family.

James I. was restored to his kingdom in 1423,* through the intervention, it is said, of his cousin, the Regent Murdoch, whose gentleness appears to have deserved a better fate than to expiate the offences of his race. The monarch was crowned, with his queen, at Scone on the 21st May 1424. Duke Robert, whose energetic regency inspired awe if it did not command respect, had been removed by a natural death in 1420,† and the country was now in great disorder. But the restored King was not long of commencing those rigorous measures which ended in the total destruction of the fortunes and family of the Regent. The first victim was Walter Stewart, now the eldest son of Duke Murdoch, also called Walter of the Levenax, from being heir of that earldom through his mother Isabella. James I. before his coronation, had ordered him to be arrested in the Castle of Edinburgh, and carried to the island of the Bass where he was closely confined. Several other per-

* *Scotichronicon*, Vol. ii. pp. 474 and 481. Mr Tytler places his return under the year 1424, Vol. iii. p. 199.

† Every historian of Scotland has recorded that the Regent Robert died 3d September 1419. I find, however, in the Register of the Great Seal a charter of confirmation by James I., dated at Edinburgh August 29, 1430, of a charter "*avunculi sui Robertis Ducis Albanie*," which charter of Duke Robert is dated "*apud Falkland, August 4, 1420, an. gub. 15.*" This clears up a difficulty started by Pinkerton, that, in the records, the year 1423 is called *an. gub. 3, of Duke Murdoch*. Pinkerton attempts to explain this by the inference that, although Duke Robert died in 1419, his son Murdoch was not recognized as Regent until 1420.

sons of the highest distinction were, at the same time, conducted to separate prisons. Very shortly afterwards, Duncan Earl of Lennox was also seized, along with Sir Robert Graham, and confined in Edinburgh Castle. A Parliament was afterwards summoned, upon the ninth day of which, being the 21st March 1424-5, James, who now felt himself sufficiently firm in his regal seat, ordered the arrest of the Regent himself, and of Alexander Stewart, his younger son, along with six-and-twenty of the most illustrious men in Scotland. Many of the nobles so hastily arrested were almost immediately released, and were, moreover, induced or compelled to become the judges of the unfortunate victims. The same day on which the Regent was arrested, Isabella, his Duchess, was seized in their palace of Doune in Menteith, carried to Dunbar, and afterwards imprisoned in the castle of Tantallon. James Stewart, their third son, alone of all his family effected an escape. This daring youth, made, on the instant, one desperate effort to succour his family or avenge their fall. With a body of armed followers, he carried fire and sword into the town of Dunbarton, and put to death the King's uncle, John Stewart, (called the Red Stewart of Dundonald) with thirty-two others of inferior note. But this struggle was unavailing. The King pursued James of Albany with such determined animosity, that he was compelled to fly, with his abettor the Bishop of Argyle, to Ireland, whence he never returned. *

Soon afterwards, in a Parliament where the King presided in person, on the 24th May 1425, Walter Stewart of the Levenax was tried by his peers, convicted, and instantly beheaded. To those who ask of what crime

* Rym. Fœd. x. 415.

this young nobleman was convicted, no other reply can be given than what is afforded by a solitary expression of a single chronicler. In one manuscript of the *Scotichronicon*, the writer of which is supposed to have lived at the period, it is recorded that Walter Stewart was "a man of princely stature and lovely person, most eloquent and wise, most agreeable, and universally beloved, and that having been convicted by an assize '*de roborea*,' was beheaded in front of the castle. Not only was his death deplored by those who knew him, but by those who had never seen him, for they were enamoured of his fame."* On the following day his brother Alexander, whom the same ancient chronicler declares to have been noways inferior to Walter in personal attractions, and that both were of gigantic stature, shared a like fate. These were the heirs-male, of the marriage between Duke Murdoch and Isabella, upon whom, by the singular contract of that ill-fated alliance, the vast succession of the Levenax had been entailed, with the additional provision of a territory, equal in extent, from the estates of Albany. Alexander Stewart did not suffer that day alone. His father, Duke Murdoch, and the aged Earl Duncan ascended a scaffold upon which the blood of Walter, the beautiful heir of Albany and Lennox, was scarcely dry. "They were executed," says one whose genius could not fail to pause upon and picture the catastrophe, "on the castle hill of Stirling, upon the little artificial mound called Hurley Hacket. From this elevat-

* Cupar MS. of the *Scotichronicon*. Under the circumstances, *de roborea* can scarcely mean *of robbery*, in a common or vulgar acceptance. It may have referred to the ambitious appropriation, or spoliation of Crown lands by the Albany family; or more probably to the recent attack upon Dunbarton, in which the King's uncle was killed.

ed position, Duke Murdoch might cast his last look upon the fertile and romantic territory of Menteith, which formed part of his family estates, and distinguish in the distance the stately Castle of Doune, which emulated the magnificence of palaces, and had been his own vice-regal residence.”*

Plausible reasons have been assigned for James I. having so suddenly visited the house of Albany with utter ruin ; but why his vengeance fell with a like severity upon Earl Duncan, now in his eightieth year, is a problem not to be solved by the scanty records of the times. During the eventful and turbulent period which intervened between the dates of the family contract in 1391, and the second regency in 1420, so unobtrusive had been the conduct of this Earl, so little had he mingled in the affairs of the distracted realm, or identified himself with the proceedings of its rulers, that his name can only be traced by means of private deeds, indicating his possession of the earldom, and the exercise of his feudal right of property. With the single exception, that he is mentioned first of the distinguished cortege of nobles whomet James I. at Durham on his return from captivity, I can find no public notice of this nobleman, until his apparently cruel and causeless execution.

* Sir Walter Scott's History of Scotland.

CHAPTER II.

POSSESSION OF THE LENNOX BY THE DUCHESS OF ALBANY AS
COUNTESS OF LENNOX.

A curious feature in the mysterious fate of the old Earl of Lennox is, that, though condemned and executed for some alleged high crime and misdemeanour, his fief incurred no forfeiture, even at a time when the Crown was eager to aggrandize itself at the expence of the nobles. This fact will be amply proved in the sequel. But it is involved in the whole history of the partition of the Lennox, which territory would not have been *inherited by the heirs of Earl Duncan*, had that nobleman incurred forfeiture, and his estates been annexed to the crown. The possession held by the Duchess Isabella after her father's death is of itself sufficient to destroy the theory of forfeiture; and all the steps taken by the coparceners, after the demise of Isabella, indicate, it is true, some difficulty and confusion impeding the course of succession, but demonstrate, at the same time, that in no way had the Comitatus of Lennox reverted to the fountain of honour, but was still ruled by the family investiture. To trace the state of the possession, from the death of Earl Duncan in 1425 to the partition and final settlement of his fief among his heirs-general about the close of that century, is necessary in order to clear up those apparently anomalous and contradictory circumstances, which hitherto have left the question of the right to the honours entangled and unintelligible.

And first, of the possession held by the Duchess after her father's execution.

It is said, that when the exasperated monarch had wreaked his vengeance on Albany and Lennox, he sent to this unhappy lady (who was by marriage nearly related to himself) the bleeding heads of those dearest to her, in order to try if the distraction of her grief would cause her to divulge secrets ; and that the Duchess endured the spectacle without allowing other words to pass her lips than these, " If they were guilty, the King has acted wisely and done justice." But this story, narrated by Buchanan, is scarcely to be credited of James I., who, though hasty and passionate, possessed an intellect too refined to be capable of the act of a savage. Isabella experienced some rigorous treatment when the storm that destroyed her family first arose, but there can be no question that she was eventually permitted to assume and enjoy the honours and territory of the Lennox.

She is said to have been reserved and lofty in her demeanour, possessing a strong mind, a calm and indomitable spirit ; and no lady of ancient or modern times ever stood more in need of such attributes to sustain her under sudden and violent calamities. Upon the 21st May 1424, her own husband, as Earl of Fife, seated his royal master in the chair of state to receive the unction and the crown. Her younger son, Alexander, received at the same time from that monarch the honour of knighthood, in company with the greatest nobles in Scotland. His elder brother Walter, the heir of Albany and Lennox, is not included in this list of knights, a fact in accordance with the chronology of the contemporary chronicler, who dates his imprisonment so early

as the 13th of May 1424, a few days before the coronation,* and while his father and brother were apparently in the highest favour at court. But in the commencement of the year 1425, the desolate Duchess had to mourn for her father, her husband, and her sons.

There is a melancholy interest pervading the widowhood of Isabella, Duchess of Albany and Countess of Lennox, which makes us regret that so little is known of her habits and occupations during the long years of her retirement, in her feudal castle on the Island of Lochlomond, after her succession to the earldom. Though bearing, with punctilious ceremony, those high titles of Albany and Lennox—lately all powerful in the realm, but now scarcely to be whispered to the breezes of Lochlomond—though possessing the broad and fair domains gemmed by that beautiful lake, she was widowed and childless in the silent halls of Inchmuryne, and haunted with the recollection that, by the hands of the common executioner, her race were extinguished,—that her young giants would not return at her call

“ To renew the wild pomp of the chase and the hall.”

* There is a tradition, which, though resting on no sufficient authority, may be true, and may also be explanatory of the early disgrace of Walter Stewart. It is said that he greatly coveted a falcon possessed by Duke Murdoch, his father, who was so fond of the bird that no entreaties of his son and heir would induce him to part with it. Upon one occasion, as the Duke was carrying his favourite falcon, this youth, of an unruly and imperious disposition, forgetting his duty to his father and the governor of the realm, suddenly tore the object of his desire from the wrist of the Regent, in those days a deadly insult, and twisting off its head, exclaimed that no one should possess it. According to the tradition, Duke Murdoch's reply was fraught with the fate of Scotland, and his own. “ Since I cannot govern you,” he said, “ I will send for one who can;” and this is supposed to connect with the negotiation which restored James to his country.

Whether Isabella was immediately released after the catastrophe of her family, or how long she was kept under restraint, I have not been able to ascertain. This is certain, however, that there was no legal bar to her completing titles in feudal form to the earldom, though she failed to do so, for in the retours of all her representatives in the Lennox, to be afterwards more particularly noticed, the lands are declared to have been in *non-entry* from the year 1425, when Earl Duncan was beheaded, thereby indicating that the sovereign, during all that time, had no other right to the Comitatus than what arose from that feudal incident. There is a curious and interesting item in the Great Chamberlain's accounts, in reference to the Duchess. In a roll of the reign of James II. between the dates 16th July 1455 and 7th October 1456, it is stated that a precept of seisin had issued from Chancery to infest the heir in certain lands of the earldom, that relief duty had in consequence been paid, but that the precept remained unexecuted, and the heir unentered, and that *the old Countess of Lennox* continued to reap the fruits, and not the King, (as in strict feudal form, under such circumstances, he might have done,) upon which state of matters, it is noted, the King himself was to be consulted.*

From this it appears that Isabella outlived James I. for about twenty years. If she harboured any feelings of revenge against him,—and she had cause to do so,—

* Great Chamberlain Roll, Register House, from 16th July 1455 to 7th October 1456.—“*Et de relevio terrarum quarte partis de glorate in qua hæres nondum intravit licet litere sasine de eisdem de Cancellaria emanaverint, vi^s. viii^d. quarum terrarum firmas antiqua Comitissa de Lenax percipit, et de eisdem et non rex continuatur.*” On the margin, “*super quo consulendus est rex.*” The lands of Glorat were a part of the Lennox.

they were amply gratified by the fate of that unfortunate monarch, whose murder in the year 1437, aggravated by every circumstance of undignified horror, called down upon the perpetrators tortures unparalleled in the most savage countries and times. A connection between this catastrophe and the fate of Albany and Lennox, may be faintly traced in the meager and dilapidated records of the period. The chief conspirator was that Sir Robert Graham who was arrested along with Earl Duncan of Lennox, and although he had been released, he seems ever afterwards to have harboured those feelings of revenge against the sovereign which came to so fearful a crisis in 1437. The contemporary account of the murder, horribly minute in its details, narrates that when the King cried for mercy, "Thow cruell tirant, (quod Grame to hym,) thow hadst nevyr mercy of lordes borne of thy blode, ne of none other gentilman that came yn thy dawnger,—therfor no mercy shalt thow have here."* But the Duchess Isabella was in no degree implicated in this dreadful transaction; for although the utmost vengeance of the whole nation was poured out upon all connected with it, we find that lady in full and peaceful enjoyment of her fief, immediately afterwards, during the minority of James II.

Probably there are charters of the Duchess, indicating her possession of the Lennox before the death of James I., lurking in unexplored charter-chests. The oldest that I am aware of proves her to have been living at her principal messuage, on the island of Inchmurryne in Lochlomond, very early in the succeeding minority. The following grants are all dated from that place.

* Printed in the Appendix to Pinkerton's History of Scotland.

About the beginning of the year 1440, the Duchess granted a charter to one Donald Patrick of a tenement of houses and yard adjoining, situated on the north side of the church-yard of Drymen, with a croft of land, &c. ; the said Donald and his successors being obliged to furnish stable room for the Duchess and her successors' horses so oft as they came to Drymen, and to furnish lodging and fire for poor people, the same as ordained by former Earls of Lennox. * In 1444, "*Isabella Duchissa Albanie, ac Comitissa de Levenax*," confirms, with the air of a feudal princess, a charter of the lands of Ballegrochyr to Donald, the natural son of her father, as a vassal of her fief. † In 1449 a precept of seisin issues from "Isabel Duches of Albany and Countess of the Levenax, till Jon Lyndsay, mare of the Levenax, greting," to infeft Thomas Spreule in the lands of Dalchorne and Dalmure ; and concluding, "giffe him sesing," &c. "in our name, haldand thir letters for your warande; witnes myself under my signet at Inchmoryn, the 19th day of February 1449." ‡ In 1450 she founded the collegiate church of Dunbarton, and gifted it with various lands of the earldom. § But the most interesting of her charters extant is one, in Latin, mortifying lands in the parish of Kilmaronock to the convent of the Blackfriars, and of which the following is the substance:

"To all who shall see or hear this charter, Isabella Duchess of Albany and Countess of Lennox, greeting, &c. Know us, *with the consent and assent of our dear-*

* Case for Woodhead, p. 51, and authorities there quoted. This charter is witnessed, among others, by Andrew Stewart of Albany, afterwards Lord Avandale, the natural grandson of the Duchess.

† Ditto.

‡ Original, *pene*s Smollet of Bonhill.

§ Case for Woodhead.

est sister-german, Margaret, spouse of the late Lord of Rusky, to have given, and for the sake of charity to have granted, and by this our present charter to have confirmed perpetually, to the honour and praise of God Almighty, and the glory of his Mother the blessed Mary, everlasting Virgin, of the holy archangel Michael, of Saint Dominic and all the Saints,—to our dear brothers, John de Govane, Prior of the Predicant Friars of Glasgow, and his successors, for the safety of our soul, and that of our dearest spouse of blessed memory, Sir Murdoch, Lord Duke of Albany, and also of the soul of the deceased Sir Duncan Earl of Lennox, our progenitor, and of the souls of Walter, James, and Alexander, our sons deceased; and of the souls of all who have died in the faith, &c. our lands of Kilmaronock within our Earldom of Lennox, to be held of us and our heirs for ever in pure and perpetual charity, with all the pertinents, freedoms, and liberties belonging to the lands. Dated at our manor of Inchmyrryne, 18th May 1451,” and witnessed by Murdoch, Arthur, and Robert Stewarts of Albany. The seal of the Duchess is appended with the seal “of our said dearest sister.”*

This charter of mortification indicates that James Stewart, the only son of the Duchess who escaped the scaffold, and who fled to Ireland from the pursuit of James I., was now dead without legitimate issue. For the consent of her sister Margaret is taken to the deed, obviously because this lady was next heir to all the honours, and impartible rights of the fief, in virtue of the remainder, in Isabella's contract of marriage, to the heirs-general of Earl Duncan. That Isabella had no heir in or through her son James is further demonstrated by

* Mr Denniston's Book of Transcripts.—MSS.

the fact, that the Lennox was subsequently transmitted through this very Margaret, and her younger sister Elizabeth, as coheireses.

But, the reader may ask, who were Murdoch, Arthur, and Robert Stewarts, witnessing this deed, and therein designed *of Albany*? They were three of seven illegitimate sons of James Stewart of Albany, whose mother is said to have been a lady of the family of Macdonald in Ireland, with whom the exiled nobleman had there formed a connection. These youths were probably adopted by the Duchess, after the death of their father, to bear her company in the melancholy halls of Inchmuryne. They are all well known to history, and some of them reached the highest distinctions in the state, as I shall afterwards have occasion to notice.

The Duchess was alive in 1456, as appears from the chamberlain accounts already quoted. But in the same rolls, and in an account ending in 1460, an entry is found bearing that the chamberlain does not debit himself with the revenue derived from the earldom of Lennox, because the King had assigned the same for building the Castle of Stirling. Isabella died, in all probability, on or shortly before the year 1460, when the King seems to have taken advantage of his feudal casualty of non-entry; and in this year we shall find it was that John Lord Dernely first attempted to obtain his service as one of the heirs-general of Earl Duncan.*

* In the account running between 9th July 1459, and 25th June 1460, the chamberlain "*non onerat se de firmis Comitatus de Levenax, eo quod Dominus Rex assignavit dictas firmas ad fabricandum castrum de Strivelyne.*"

CHAPTER III.

OF THE HEIRS OF THE INVESTITURE AFTER THE DEMISE OF ISABELLA OF LENNOX — REFUTATION OF THE HISTORIANS WHO HAVE RECORDED THAT THE EARLDOM OF LENNOX WAS FORFEITED IN 1425.

MARGARET of LENNOX, the second of Earl Duncan's three daughters, was married, as the charter of mortification by the Duchess states, to Sir Robert Menteith of Rusky; an alliance arranged at the period of Isabella's marriage to the son of the Earl of Fife and Menteith. Sir Robert Menteith was the son of Sir Alexander, who was the son of Sir Walter, who was the son of "Sir John de Menteith," head of the family of Rusky, and generally reputed to have been son of Walter Earl of Menteith, who was third son of Walter, High Steward of Scotland.* From the charter of mortification it also appears that Lady Margaret's husband, Sir Robert, was dead before the year 1451. Sir Murdoch Menteith, the eldest son of that marriage, (who is said to have been killed by his own servant near Dunblane,†) married Christian, daughter of Sir David Murray of Tullibardine, ancestor of the Dukes of Athol. They had an only son, Patrick Menteith, whose early demise, very soon after his father's, and before the year

* See Addenda for reply to Mr Riddell's observations upon the descent of Menteith of Rusky.

† Macfarlane's MS., Advocates' Library.

1455, left the great succession of his house, which combined one-half of the Comitatus of Lennox, with goodly baronies in the Menteith, to be shared between his two sisters, ELIZABETH and AGNES.* These young ladies were minors when they succeeded to their brother Patrick, and their persons and estates had consequently fallen, by feudal incident then in full force, under the guardianship of their sovereign James II. By a royal deed, dated at Edinburgh 26th March 1455, and still preserved among the Merchiston papers, that monarch bestowed the *maritagium* of Elizabeth Menteith upon John Napier of Merchiston, who married the young lady about that period.†

The other coheirress, Agnes Menteith, married, about the year 1460, ‡ John Haldane of Gleneagles, the heir of a very ancient baronial family. Thus before the death of the Duchess Isabella, her sister Margaret had representatives in these young coheirresses of Lennox and Rusky, her grand-daughters.

ELIZABETH of LENNOX, the youngest sister of the Duchess, was married, about the period of Isabella's contract, to Sir John Stewart, son and heir of Sir Alexander Stewart of Dernely, from whom he inherited great estates in different parts of Scotland. Sir Alexander died about the year 1403, and his son Sir John went to France in the year 1420, to the assistance of Charles

* Merchiston papers.

† This was not John of the Logarithms, time-honoured Merchiston, but his lineal male ancestor, in the fifth generation. John of Rusky was the eldest son of Sir Alexander Napier, who at the date of this gift of marriage was comptroller of the household to James II. and was afterwards master of household to James III.—See *Memoirs of Merchiston*.

‡ Memorial for Gleneagles.

VII., then Dauphin. In those foreign wars he became the most distinguished warrior of his age, acquired the splendid titles of Seigneur d'Aubigny, and Comte d'Evreux, and was killed at the siege of Orleans, where he brought defeat upon his party by the excess of his valour. Sir Alan Stewart succeeded him, being the eldest son of the marriage with Elizabeth of Lennox. In the year 1439, Sir Alan was treacherously slain by Sir Thomas Boyd of Kilmarnock, and was succeeded by his eldest son, the celebrated Sir John Stewart created Lord Dernely, and who afterwards usurped the earldom of Lennox. John Lord Dernely was married in 1438, the year before his father's death, to Margaret, daughter of Sir Alexander Montgomery of Ardrossan, and he was created Lord Dernely in 1460 or 1461.* Consequently, long before the death of the Duchess Isabella, her youngest sister Elizabeth had a representative in Dernely, her grandson, who was a married man in 1438.

Thus there were various parties entitled to the character of heirs-general of Earl Duncan, when the fief opened to that remainder by the death of Isabella. In that character her two sisters were coheiresses of Earl Duncan, and had they survived Isabella, which they appear not to have done, would have divided the fief. The share of Margaret was taken up by her coheiresses of Rusky, who divided that share. Elizabeth was represented without division by John Lord Dernely.

But while the territory was thus split into three portions, of which Dernely's was equal to the other two, the honours of the Comitatus,—the right to the chief messuages, &c. and the title of Earl,—were, by the acknowledged law of Scotland, *impartible* rights, and fell to the eldest coheiress of Lennox, and her eldest repre-

* See Andrew Stewart's History of the Stewarts.

sentative. So, according to the order in which I have arranged the heirs-general of Earl Duncan, the accuracy of which appears to be verified in the sequel, Elizabeth Menteith of Rusky, spouse of Napier of Merchiston, upon the demise of her grand-aunt the Duchess Isabella, had right to the honours of Lennox, and a fourth of the territory. And the remaining heirs-general were entitled to enter upon their respective shares.

But it is well known that, *de facto*, John Lord Darnley became Earl of Lennox, and transmitted that title through a lineal succession of distinguished earls to James VI. of Scotland. The period, however, when he first assumed the dignity, is not so generally known, and genealogical historians of the house of Stewart have also been quite at a loss to say whether he did so as his inheritance, or in consequence of a new creation in his favour, either by James III. or IV. The historians of Scotland have only added to the doubts and confusion regarding the history of the Lennox, by asserting that it *was forfeited* in the person of Earl Duncan,—a most extraordinary assertion, considering the many facts and records that disprove it. Dr Robertson tells us, that Earl Duncan, beheaded by James I., was forfeited, and his possessions *annexed to the Crown*. Mr Tytler, in his excellent History of Scotland, still in course of publication, has adopted the error of Dr Robertson. “These executions,” says he, “were followed by the *forfeiture to the crown* of the immense estates belonging to the family of Albany and to the *Earl of Lennox*; a seasonable supply of revenue,” &c.* No authority is quoted by our historians in support of their assertion, and at a subsequent period they suddenly introduce an Earl

* Tytler's History of Scotland, Vol. iii. p. 227.

of Lennox upon the restless stage of Scotland's commotions, without any explanation of the revival of the honours, and at periods, too, when in point of fact, as the records of Parliament instruct, no one had resumed them, or sat in Parliament as Earl of Lennox. But how came the Lennox to pass by inheritance, and be taken *by services to this very Earl Duncan*, if his estates were forfeited, and annexed to the Crown? This question our historians have never considered. The truth is, Earl Duncan suffered no attainder in title or estates. There is no proof that he did,—there is unquestionable proof that he did not,—and I shall at once dispose of the point.

James I. certainly acquired possession of the earldoms of Fife and Menteith, which belonged to his cousin Duke Murdoch. In 1427, two years after Murdoch's execution, the King erected the lands of Craynis into the earldom of Menteith, in favour of Malise (whom he had deprived of the earldom of Strathern) and the heirs-male of his body. In the Parliamentary confirmation of the dowery of the Queen of James II. dated 1st July 1451, that dowery is said to be secured on the earldom of Fife, manor and castle of Falkland, and park of the same; and also upon the lordships of Menteith and the castle of Doune. Menteith and the castle of Doune are elsewhere enumerated among Crown lands. But there is no record extant in which the Levenax is mentioned as belonging to the Crown in property; nor of any grant or new erection of the earldom after the execution of Earl Duncan. Although a forfeiture is not to be assumed, yet it may be admitted, that the mere fact of the process of forfeiture not being extant would scarcely afford a conclusive argument, considering the dilapidated state of the Scottish records of that period; but that no notice or indication, whatever, of this earldom having been annexed to the Crown,

should be discovered among the variety of notices which prove such to have been the fate of the possessions of Albany after the catastrophe of 1425, can only be accounted for by the fact, that Earl Duncan did not suffer forfeiture.

But there is positive evidence of the most conclusive nature that he did not. The honours and the fief, as shown in the last chapter, devolved upon his eldest daughter and heiress, in terms of the marriage-contract of 1391. By virtue of this family settlement, the widowed Duchess took and kept possession of the whole estates of the Lennox—exercised without challenge the rights of feudal chief—resided on the Island of Inchmurryne in Lochlomond, being the principal messuage—granted many charters of lands belonging to the Comitatus, and in those charters used the style, “Isabella Duchess of Albany, and Countess of the Levenax”—and all this for about thirty years, the period she survived her father.

This state of possession was not only not disturbed by the sovereign, but expressly acknowledged by him. The Great Chamberlain roll already quoted, (being the royal accounts in which the King’s interest is particularly attended to) proves the royal interest in the lands of the Lennox to have been simply that of over-lord—expressly recognizes the Countess under that title, “*antiqua comitissa de Lenax*”—acknowledges the casualty of relief to have been paid, and the issuing of a precept of seisin to the heir,—and complains of continued *non-entry* while she is enjoying the fruits.

The subsequent history of the Lennox will amply demonstrate that this state of matters was not a mere personal indulgence to the Duchess. At her death the Comitatus, though lying long in non-entry for causes that

shall be distinctly traced, came eventually to be taken, not by the Crown, but by the representatives of Earl Duncan's second and third daughters. These representatives all made up their titles accordingly, and took as heirs-general of Earl Duncan, who, as those titles expressly bear, died *at the faith and peace of the King*,—expressions which must be held to mean that that nobleman did not perish for treason, and was not forfeited.* These titles were confirmed by successive sovereigns from generation to generation.† In virtue of them, the romantic country, with which our historians have enriched the crowns of the early Jameses, *continued to descend by inheritance through the heirs-general of the very nobleman against whom forfeiture is alleged.*

* “*Hec inquisitio facta apud Dunbertane 4 November 1473, &c. quod quondam Duncanus Comes de Levenax, proavus Elizabeth de Menteith, latricis presentium, obiit ultimo vestitus et satus ut de feodo ad pacem et fidem Domini nostri Regis, de omnibus et singulis terris et annuis redditibus totius Comitatus et Dominii de Levenax.*” Retour of Elizabeth Menteith of Rusky as one of the heirs-general of her great grandfather.—*Merchiston Papers*. The retours of all the other coheirs are extant, and afford the same conclusive argument against the idea of forfeiture. The time of non-entry specified in all these retours agrees precisely with the period of Earl Duncan's execution in 1425.

† From many instances I select one, which amounts to a declaration by James II. that his father had not visited the Lennox with forfeiture. By a charter under the Great Seal, dated 22d February 1494, Elizabeth Menteith's son and heir, Archibald Napier, is confirmed in all her lands in the Lennox, which are declared to have come to her by inheritance, “*fuertunt Elizabeth Menteith de Rusky, matris dicti Archibaldi, hereditarie, et per brevia capelle nostre partitionis et divisionis ipsi Elizabeth tanquam uni heredum dicti Comitatus de Levenax, &c.*”—*Merchiston Papers*.

CHAPTER IV.

THAT EARL DUNCAN HAD NO HEIR-MALE OF HIS OWN BODY.
—REPLY TO MR HAMILTON'S CASE FOR WOODHEAD.

THE royal charter to Earl Duncan containing the limitations has been already quoted. The destination is first to himself and the *heirs-male of his body*; secondly, to Murdoch Stewart and his spouse Isabella, and the longest liver of them, and to the heirs of that marriage; and lastly, to the *heirs whomsoever* of Earl Duncan. An heir-male of the body of Earl Duncan would have been a most important and conspicuous person; and accordingly in the contract of Isabella's marriage, the contingency of her being superseded in the earldom by the birth of a brother is particularly and primarily contemplated. It would have been strange indeed if such a direct heir of "the Levenax" existed, and in such times, without his name having entered the records, not to say history; for a hasty adoption, in the Caledonia, of the theory of this young Earl's existence, cannot rank as history, being entirely derived, against the evidence of the public records, from the *ex parte* legal case for Woodhead. Indeed Mr Chalmers, in his excellent work, records the theory in question, and some of the proofs which redargue it, *unico contextu*. He says, "The Earl's eldest daughter, Isabella Duchess of Albany, was imprisoned in Tantallon Castle during the catastrophe of her father, husband, and two sons, but she was afterwards released.

Notwithstanding her father Earl Duncan left a *legitimate son* of his second marriage, called Donald of the Levenax, she appears to have enjoyed the earldom of Lennox during the reign of James II. in the Castle of Inchmurrin in Lochlomond, the chief messuage of the earldom, where she granted charters as *Countess of Lennox* to the vassals of the earldom.* Thus it appears that Mr Hamilton's ingenuity in the case for Woodhead betrayed even the learned and laborious author of the Caledonia into the anomalous position of stating as a certain fact, the existence of a young Earl who is absolutely unknown to the records of Scotland, and then alluding, less confidently however, to *authentic* records directly opposed to the fact asserted.

The basis of the case for Woodhead, whose object is to prove that Earl Duncan left a legitimate son, now represented by the family of Lennox of Woodhead, are two charters, both of which, however, contain internal evidence against the very claim in support of which they are adduced.

1. A charter of the lands of *Ballyncorrauch*, &c. in the Lennox, from Earl Duncan to his son Donald of the Levenax, commencing in the terms quoted below.† Upon this the claimant is made to plead ; " Earl Duncan repeatedly declares Donald of the Levenax ' HIS LAWFULL SON ;' and the grant made to him is with the

* Caledonia, Vol. iii. *Dunbartonshire*.

† " Be it kende till all men be thir present lettres, us Duncane Erle of the Levenax, *with the consent and the assent of Walter Stewart*, till haff giffine and till haff grantit, and be this present writ, gifes and grantis till my weil belufit *sone laffnel* Donald of the Levenax, all and singlar my landis of Ballyncorrauch," &c. dated at Strablayn, 22d July 1421. See *Case for Woodhead*, pp. 12, 13, where the whole charter is quoted.

consent of Walter Stewart, the eldest son of Isabella and the Duke of Albany," &c.*

Without adverting at present to the probable import of the phrase *laffwell*, as used in this charter, we may notice the circumstances in that deed directly opposed to the interpretation of the claimant. The hypothesis for Woodhead is, that Earl Duncan here grants a charter to his *eldest son and heir* as his vassal ; and that to this grant the Earl obtains the consent of *his daughter's* son and heir, Walter Stewart, the nephew of the alleged heir of the Lennox. A slight acquaintance with the antiquities of the law of Scotland will suggest a very different theory from these facts. It was the constant practice of our forefathers to take the consent of the next heir of the granter to all deeds affecting the fief ; a practice which it will be necessary to illustrate in a subsequent chapter. Walter Stewart, as the eldest son of Isabella, was unquestionably heir of the Lennox, failing heirs-male of the body of his grandfather. But if *Donald* was heir-male of the body of Earl Duncan, how came Walter Stewart, the son of his sister, to adhibit consent and assent in a charter to him ? No one possessing the slightest knowledge of the history of the law of Scotland can read the charter in question, without at once perceiving that it is a grant, not to the heir of the earldom, but to a third party, whose interest in the matter stands in contradistinction to that of the heir. The *red-dendo* of the charter is conceived in these terms : " Gifand thairfor zerly the forsaid Donald my laffwell son and *his ayris*, and his assignees, till me, *minc ayris*, a peny of silwir ;" and the clause of warrandice runs thus ; " and we forsutht the said Duncane and *our ayris*, the forsaid land with thair pertinents, till the forsaid Do-

† Case for Woodhead, pp. 13, 53.

nalde and till *his ayris*, and till his assignees, agayne all erdely man and woman, we sal warand," &c. Here seems to be an unequivocal declaration by Earl Duncan himself, that Donald was not his heir, and that Donald's heirs were not Earl Duncan's heirs,—for it is inconceivable that all these expressions are in reference to the only son of the Earl himself,—the direct heir-male of the fief on the verge of his succession, the Earl being at this time about eighty years of age. It was common enough for a feudal lord to invest his son and heir with the fee of the estate during his own life, for which it was not necessary to ask the consent of any one except the sovereign. But a subordinate grant of vassalage to the heir of the fief, and *his heirs*, as distinguished from the *heirs of the fief*, taking at the same time the consent of a third party, who, *ex hypothesi*, was not the heir of the fief, would, it is apprehended, be *unique* in the history of feudal and family settlements.

This internal evidence of the charter itself leads inevitably to the conclusion, that the phrase *son laffwell*, occurring in that deed, must be susceptible of some other interpretation than *son and heir*. The proper interpretation we shall readily discover, upon considering the second charter produced in support of the claim for Woodhead.

2. Mr Hamilton in his Case thus introduces it: "Donald of the *Levenax*, in consequence of the estate thus granted to him, styled of *Ballcorrack*, very soon afterwards acquired the lands of *Ballegrochy*, in the vicinity of the former. These and other lands within the earldom of Levenax were held by Sir William Graham of Kyncardyne (ancestor of the family of Montrose) of Earl Duncan as his feudal superior; and upon the 20th August 1423, a grant of that property was made

by Sir William to Donald, in which he is explicitly styled *filius legitimus Duncani Comitis de Levenax*." The learned author of the Case then proceeds to state, that after Earl Duncan's death in 1425, *his daughter* Isabella becomes vested in the earldom, and *confirms* to her brother Donald this charter granted by *her vassal*, Sir William Graham. "The charter by Isabella," says the Case, "contains, as usual, the previous deed, which is expressly confirmed; and in the confirmation she explicitly acknowledges and declares *Donald de Levenax* to be *her father Earl Duncan's lawful son*."*

In this charter of Ballegrochyr the *heir of the Levenax* is placed in a yet more peculiar and anomalous position than by the terms of the former charter of Ballcorrach. Sir William Graham, it must be observed, is a *vassal* of the earldom. The charter which he grants to Donald is to be held *of him*, Sir William, in the Lennox. Thus the heir of the Lennox becomes the vassal of a vassal in the Lennox. The Earl of Lennox dies, and then his heir Donald, *de jure* Earl, obtains confirmation of his subordinate charter from *his own sister*, in order that he, the Earl, may still remain Sir William Graham's vassal, *i. e.* the vassal *of his own vassal in the Lennox*. This most extraordinary state of matters calls for a close inspection of the terms of the charter, in which, according to the Case for Woodhead, Donald is explicitly styled *filius legitimus Duncani Comitis de Levenax*. Now the charter by Isabella to her brother is quoted in the Case, and from that it appears that the word *legitimus* neither occurs in Sir William Graham's grant, nor in Isabella's confirmation of it. The words are "*Omnibus hanc cartam visuris vel audituris Isabella Ducissa Albanie ac Comitissa de*

* Case for Woodhead, p. 13.

Levenax Salutem in Domino Sempeternam, Noveritis nos cartam Domini Willielmi de Graham militis Domini de Kyncardyne factam Donalddo de Levenax filio legitime Domini Duncani quondam Comitis de Levenax," &c. and the words of the grant by Sir William Graham are in like manner, "*Donalddo de Levenax filio legitime Domini mei ac potentis Domini Duncani Comitis de Levenax," &c.*"

Here, then, the whole mystery (otherwise utterly inextricable) is unravelled. The term used is not *legittimus*, but *legittime*, and that must have been intended to stand not for *legitimate*, but *legitimated*.* This Donald of the Levenax was obviously a natural son who had obtained *letters of legitimation*, a process by which his *heirs-general* were recognized, (and not merely heirs of his own body to which an illegitimate person was by law restricted,) but which did not enable him to succeed to the honours of his father. His sister Isabella, consequently, as the above charter expressly bears, had become Countess of Lennox in her own right, upon the demise of her father, and in that capacity confirmed the subordinate grant of Ballegrochyr to her vassal brother.

The term *laffwell*, occurring in the first charter examined, can bear no other interpretation than the view

* Mr Riddell, in his "Statement in reference to the late pretensions of the family of Lennox of Woodhead," printed in the Appendix to his Reply to Hamilton of Bardowie, has these remarks upon the point in the text. "In one of the Woodhead grants 'legitime' and not 'legittimus' (the adjective) is employed, which may possibly be the French word 'legitimé,' borrowed perhaps like others from our Gallican neighbours, however awkwardly here embodied—and actually expressive, as in its noted application to the spurious offspring of Louis XIV., of the previous signification;" namely, *legitimated*.

Royal letters of legitimation run thus, "*Sciatis quod, &c. legitimamus, et tenore presentium legitimamus, pro nobis et successoribus nostris," &c.*"

just taken of *legitime*. That charter contains a parental provision of a landed estate to Donald, and *his heirs and assignees*. The qualification of *lawful** applied to Earl Duncan's *son and heir* in the fief, and superseding the latter usual and unequivocal expression, would have been remarkable. Applied to a son, however, who was not heir of the earldom, and who, in ordinary circumstances, was not recognized as having heirs except of his body, the qualifying term *lawful* or *legitime* indicated his legalized state, and sanctioned the reference to his *heirs and assignees*.

Was Donald ever called heir of the Lennox, or did Earl Duncan ever take *his consent* to grants of the earldom? Never. On the contrary, during Earl Duncan's life his daughter Isabella is termed *heiress of the earldom of Lennox*, and it is her consent, and that of her son and heir Walter Stewart, which Earl Duncan obtains to his charters.

Was Donald ever called Earl of Lennox, or did he ever pretend to be so, or to act as feudal lord of the Lennox? Never. On the contrary, his sister Isabella assumed the honours, and possessed the fief for thirty years; and Donald himself claimed confirmation of his vassalage in the Lennox *from her*. After her death the Comitatus was divided among *heirs-female* of Earl Duncan, and so descended to modern times, though the line of Donald of Ballcorrach never failed.

Of this distinction, between the status of Isabella

* "The phrase *lawful son*, (says Mr Riddell,) as denoting legitimacy at common law, did not technically prevail with us until the commencement of the sixteenth century, while it is observable, the term *lawful*, even at the later period, was descriptive of that partial legitimacy which our Kings were in use to confer upon issue undoubtedly spurious."—*Reply to Bardowie*, Append. pp. 3, 4.

and her brother, there is a remarkable illustration afforded by a transaction regarding, I presume, the same estate of which the *dominium utile* was granted by Sir William Graham to Donald of the Levenax. Upon the 25th of August 1423, just two years subsequent to the date of the charter in which Donald is called "son laffwell," and only *five days* prior to the charter of Ballegrochyr from Sir William Graham "*Donaldo de Levenax filio legitime*,"—Isabella ratifies a charter by Earl Duncan* to this same Sir William, including, among other lands of the Lennox, those of Bargrochane, and she is therein styled "*Isabellam Stewart, Ducissam Albanie, Comitissam de Fyfe et de Menteth, ac heredem Comitatus de Lenax*." So at the time when Sir William Graham is transacting with Donald as his vassal, and as the "*filius legitime*" of Earl Duncan, he is also transacting with the Earl and his daughter Isabella as his feudal superiors in the very lands he grants to Donald. This distinctly proves that the phrase *legitime* applied to Donald in the charter from Sir William, could not be meant to indicate that he was *heir of the earldom*,

* "*Apud Edynburghe, August 28, 1430.—Rex confirmavit cartam confirmationis et ratificationis tallie per Isobellam Stewart Ducissam Albanie, Comitissam de Fyf et de Menteth, ac heredem Comitatus de Lenax, factam super quandam cartam talliatam per quondam Duncanum comitem de Lenax patrem ejus, Willelmo de Grahame, militi, concessam*," &c. dated at Falkland, August 25, 1423. *Abbrevatio Registri Magni Sigilli, Domini Jacobi Primi.*

The above I took from a printed abbreviate in the Register-House. Mr Riddell in his statement quotes the same charter, and the previous one of Earl Duncan therein confirmed, from *Reg. Mag. Sig. lib. iii. 84*. The charter by Earl Duncan to Sir William Graham is dated 10th August 1423, and bears to be "*cum consensu filie sue domine Isabelle Duchisse Albanie, ac cum consensu et bona voluntate nepotis sui Valleri Senescalli et filii et heredis prefati Ducis Albanie*,"—but not a word of Donald, "my son laffwel."

since at the very same time, the same parties acknowledge Isabella to be *heiress of the earldom*.

Armorial bearings of the period furnish valuable adminicles of evidence in all genealogical questions, and the seal of Donald of the Levenax has accordingly been pressed into the argument for Woodhead, and is engraved for the case drawn up by Mr Hamilton. The learned author was anxious to establish that Donald carried the *pure* Lennox shield, which, as he conceived, bore a saltier *engrailed*, cantoned with four roses. He was a little disconcerted, however, in this part of his argument by the fact, that the original seal of Donald, appended to a deed dated in the year 1441, (sixteen years after the death of Earl Duncan,) carries a *plain* saltier, cantoned with the roses, but having the awkward addition of a mullet or star placed upon the centre. The case for Woodhead thus treats this delicate point: "The only difference (between the seal of the earldom and Donald's) is, that on the seal of Donald in 1441, there appears to be a mullet at the crossing of the saltier. But this is no mark of illegitimacy,* nor did any distinction of that kind ever appear upon the arms of this family or of any of its branches. The *correct* arms, as described by Mac-

* Mr Riddell, in allusion to this seal, observes, "Neither is his armorial bearing important, for he only used that of Lennox, with a common mark of cadency, a difference which was imparted to spurious children."—*Statement*, p. 3. But the seal is not unimportant in the question of Donald's legitimacy. Unquestionably that person was Earl Duncan's son. Had he been son and *heir*, a label of three points would have marked that condition, instead of a star in the centre. But the date of this seal happens to be sixteen years after the death of Earl Duncan, therefore, unless it also be said that Donald was a *younger* son, the star can only be accounted for as a mark of illegitimacy.

kenzie, were long preserved, though now lost, in the House of Woodhead, carved upon a window shutter, bearing the date 1426, and *hence supposed* to have originally belonged to the mansion of Ballcorrach. These are also free of any degrading distinction.” *

In support of this slender argument the following armorial bearings are engraved with the genealogical tree which accompanies the case.



Nothing can be more unsuccessful than this heraldic plea. Donald's *own seal*, attached to an original deed, is here attempted to be redargued by the carving upon a shutter which does not now exist, and the only authority for which is “a drawing of the House of Woodhead by the master of Elphinstone in 1730.” But the shape of the shield, and above all the *Arabic numerals* indicate that this armorial carving must have been more modern than the middle of the fifteenth century, and can never redargue the original looking seal, with which it is so rashly contrasted in the Case for Woodhead. The fact is, that Mr Hamilton had followed Sir George Mackenzie, and those heraldic writers who have erroneously recorded that the old Earls of Lennox carried the saltier *engrailed*. Now, I am not aware of a single instance to that effect. Napier of Merchiston, indeed, has carried the saltier *engrailed*

* Case for Woodhead, p. 46.

since at least the commencement of the fifteenth century, which fact agrees with the tradition of that family that they are *cadets* of Lennox, for engrailing was unquestionably used as a *mark of cadency*.* Mr Riddell, however, holds a different opinion with respect to the arms of the Levenax. That learned gentleman remarks, that the seal of Napier of Merchiston, in the fifteenth century, “exhibits nothing but the Lennox arms, the cross being engrailed—which last fact is immaterial, for it was so occasionally carried by the principal representatives of Lennox.”† If Mr Riddell here refers to the *old* Earls, his assertion requires proof, for I have traced those seals through centuries, and from the old race even through many generations of the *Dernely* race

* “Engrailed is said of crooked lines which have their points outward, as those which form the saltier engrailed in the arms of Lennox.”—*Nisbet's Essay on the ancient and modern use of Armories*. Yet in the same work he expressly states, that engrailing was a mode of differencing. “When lines of partition are carried right by principal families, *their cadets* make them crooked by putting them under accidental forms, such as *engrailed, waved, &c.* for a distinction.” P. 115.

† This bare assertion, contained in Mr Riddell's observations upon the Memoirs of Merchiston, is made in the face of, *but without noticing*, an engraved plate of the Lennox seals, which refutes the theory of the old Earls of Lennox having carried the saltier engrailed. The plate contains seals both of the ancient earldom, and of the Dernely race, and the first appearance of the *engrailed* saltier is on the seal of Robert Stewart, Bishop of Caithness, (second son of John third Earl of Lennox of the Dernely race,) who was created Earl of Lennox by James VI., 16th June 1578, after the earldom had merged in that monarch. It would have been “highly obliging” if Mr Riddell had supported his assertion by a single instance of the Lennox saltier *engrailed* as carried either by the old Earls, or even on the *surtout* of the Dernely race (which is of less consequence to the argument) previous to James VI.—*Compare Mr Riddell's Tracts*, p. 125, with *Memoirs of Merchiston*, p. 11, and *explanation of the plates*.

of Lennox, and never could discover a single instance in support of this theory.

1. The seal and signet of Malcolm fifth Earl of Lennox are preserved in the chapter-house of Westminster, and in both of these the saltier is plain.

2. The seal of Donald sixth Earl of Lennox, is also in the chapter-house, and that too has the saltier plain.

3. There is a minute description of the seal of Walter seventh Earl of Lennox, contained in a notarial transcript dated in 1440, and the saltier is not described as engrailed.

4. There can be little doubt that Duncan, eighth and last Earl of the ancient race, carried the plain saltier, for the seal of John Lord Dernely, who served heir to Earl Duncan, is preserved in the Merchiston charter chest, and in his Lennox surtout, adopted in virtue of that service, the saltier is plain.

Through the Dernely race I have traced the seals of all the generations (in the Merchiston charter chest and elsewhere) in unbroken series, till the earldom merged in James VI., without detecting a single instance of the saltier *engrailed*. In Henry the Seventh's chapel at Westminster is the tomb of the Stewarts of Lennox, surrounded by their armorial bearings, which, probably, would there be executed with scientific accuracy. Nisbet quotes the tomb in support of his description of the Lennox arms, and describes the saltiers as engrailed. Francis Sandford, who was Lancaster herald in the reign of Charles II., has given engravings of that tomb, with all its emblazoning, in his genealogical history of the Kings of England. In the engravings the saltiers are engrailed, but, if I mistake not, *upon the tomb itself they are all plain*.*

* In the course of a correspondence with the late William Lord

These proofs, while they refute the dictum of the author of the Tracts, destroy the argument attempted to be reared upon the sketch of arms engraved in the Case for Woodhead.

Why Donald of Ballcorrach placed a star upon the unengrailed saltier of the Lennox, in his seal, has already been made very manifest; but the reason seems to be placed beyond the reach of doubt by the following discovery made by Mr Riddell, which may be termed the *coup de grace* to the Case for Woodhead. From the Brisbane charter-chest, that indefatigable antiquary brought to light an original charter by Earl Duncan, dated 12th August 1423, and relating to lands adjoining Donald's estate, which charter is witnessed by "Malcolmo, Thoma, et *Donaldo*, filiiis nostris *naturalibus*."*

Napier upon this point, his Lordship, in a letter to the author, dated London, 25th August 1832, says, "I read to Sir William Woods the extract from your letter about the plain and engrailed saltiers, and he says your remark as to cadency is correct. He referred to Sandford's work, where the *representation* of Dernely-Lennox on the tomb is *engrailed*; but I went immediately to *Henry Seventh's Chapel*, and found the said arms in three instances; that is, on each side and at the foot, in the centre and in connection with the royal and other arms, with the saltiers *all plain*. Therefore you are right, and Sandford and the genealogical writers are wrong."

* Brought forward in the statement appended to the Reply to Bardowie.

CHAPTER V.

CAUSES WHICH OBSTRUCTED THE IMMEDIATE ENTRY OF THE HEIRS-GENERAL OF EARL DUNCAN TO THEIR SUCCESSION IN THE LENNOX AFTER THE DEMISE OF THE DUCHESS—LIFERENT GRANT OF THE LENNOX TO THE CHANCELLOR AVANDALE—TITLES MADE UP BY THE HEIRS-GENERAL.

BUT why, upon the demise of Isabella, were the honours so long in abeyance, without any pretext on the part of the Crown that an heir-female could not succeed to an earldom, or that this earldom had been forfeited? and why was the Lennox neither immediately entered by all the parceners, as heirs-general of Earl Duncan, nor yet annexed, *per fas aut nefas*, to the Crown?

The following historical considerations will, it is hoped, afford a solution of these hitherto perplexing questions:

When the old Countess of Lennox died, in or shortly before the year 1460, the right to her fief became divided, and under circumstances peculiarly disadvantageous to the legal assumption of the dignity. Scotland, it is true, had by this time “long understood and acknowledged the rights of primogeniture and representation in succession, inventions so necessary for preserving order in the line of princes, and for obviating the evils of civil discord and of usurpation.”* Yet there never was a period when justice was more feeble, or when the laws,

* Erskine.

especially of succession, were more likely to be grossly and violently infringed, than when the succession to the earldom of Lennox opened to these coheiresses. The year 1460 was that in which James II. was killed at the siege of Roxburgh. His successor was a child, whose natural guardian was a woman; and it is well known that the whole country became as much as ever a prey to lawless struggles for power, depending for success either upon the actual custody of the King's person, or upon vast territorial influence. This was not the most favourable opportunity for a young lady to assert right to an earldom, or to claim possession of the *caput baroniæ* of one of the most desirable fiefs in Scotland, when at the same time she was only entitled to one quarter of the lands to sustain the dignity.

This earldom, moreover, stood in a peculiar situation. Though certainly not forfeited, it had sustained a severe shock in the last reign, and, considering the state of the times, must have been in some jeopardy of annexation to the crown. At the very period, a notable instance occurred which proves how easy it then was for oppression to wear the mask of justice, and for interested power solemnly to redargue the law of the land. This was the decision obtained by the influence of the Crown in the case of the Earl of Mar in 1457. "The ministers of James Second," says Lord Hailes, "took possession of the earldom of Mar as devolved to the crown. Robert Lord Erskine, the son of Thomas Lord Erskine and Janet Keith, attempted to vindicate his just rights to the earldom. For this purpose he obtained himself served nearest lawful heir to Isabella Countess of Mar. The evidence of his propinquity was clear, and in the present age is admitted to be indisputable. In consequence of this, Robert Lord Erskine assumed

the title of Earl of Mar, and granted various charters to the vassals of the earldom. Nevertheless, he attained not to the peaceable possession of the earldom. The ministers of James II. had procured an Act of Parliament, that no lands nor possessions pertaining to the King 'be given or granted till onie man without the advice and consent of the three estates of the realm, unto the time of his age of twenty-one years.' This served as a pretext for holding possession of the earldom of Mar during the minority of the Sovereign. During the life of Robert Lord Erskine various applications were made to Parliament and to the privy-council for restitution of the earldom. Terms of accommodation were proposed, and an agreement for a temporary possession was made. Nothing, however, was finally adjusted when Robert Lord Erskine died. Then the Crown took a bold measure indeed. By an after declaration of the legislature we are authorized to give it its true appellation of an act of injustice."* Lord Hailes goes on to state, the groundless and illegal pleas upon which a reduction of Lord Mar's right was affected,—and the eventual restoration of the family of Erskine, by Mary Queen of Scots, against this unjust decision. Mr Tytler justly observes that the judgment of James II. in this case, "in which the rights of a private individual were sacrificed to the desire of aggrandizing the Crown, casts a severe reflection upon the character of the King and his ministers, and reminds us too strongly of his father's conduct in appropriating the earldom of March."†

But while the power of the Crown, and the manner in which it had been so recently exercised, was sufficient to deter the young heiress of the divided Lennox from asserting her lofty rights upon the demise of her

* Sutherland Case.

† History of Scotland.

grand-aunt the Duchess of Albany, she had difficulties to contend with from which the case of Mar was free. The territorial principle, and the tyranny of feudal power, tended greatly to reduce her chances of success in a competition even with a junior branch, which, however, inherited a portion of the territory twice as large as what fell to her share. Lord Dernely, a turbulent and ambitious noble, stood in the very same degree of relationship to Earl Duncan, though representing his youngest daughter. At the same time, his personal weight, no less than his double share of the inheritance, gave him a vast advantage in his desire to usurp the title. These considerations alone would account for the fact, that the lady of John Napier of Merchiston, (assuming her to have been the leading coheirress,)—although in 1454 she completed, as shall be afterwards shown, her titles to estates in the Menteith, as heir of Patrick Menteith her brother, and, in right of primogeniture, obtained possession of the principal messuages,—did nevertheless forbear, until the year 1473, to enter even to her share of the lands in the Lennox, much less to claim the honours and impartible rights, to which, however, she had the same legal right as in the Rusky succession.

But, it may be asked, why, under these circumstances, did not this wide and wealthy earldom immediately fall a prey to that desire of aggrandizing the Crown which at the very time operated so successfully against the earldom of Mar? or how came it that the potent Dernely himself was so long unable to effect that final arrangement and partition of the Comitatus, which did not leave him in undisturbed possession of the honours until thirty years had elapsed since the succession opened to the various coparceners?

The answer will be found in the history of another

individual who became interested in the possession of the Lennox.

Of these seven illegitimate sons, already noticed, of James Stewart of Albany, *Andrew Stewart* was the eldest. His name occurs, along with some of his brothers, as witness to a charter granted by the Duchess Isabella when residing at Inchmuryne. He and his brothers were probably reared under the special care of their grandmother. This youth must have held a distinguished place in times when the feeling against illegitimacy was by no means in proportion to the severity of the law. He stood precisely in the same degree of relationship to Earl Duncan as did the ladies of Rusky, and Lord Dernely. But, moreover, had he been legitimate, he would have been *heir of the marriage between Isabella and Duke Murdoch*, and would have excluded co-heiresses. That he and his brothers were illegitimate, however, is unquestionable, for their letters of legitimation are upon record, and to the very charter of the Duchess which these youths witness, the consent and assent of their grand-aunt, Margaret, is taken as eldest co-heiress of the Lennox. But Andrew Stewart was nevertheless reared with the same distinction as if the bend sinister had not excluded him from the fief. His youthful years, spent on Lochlomond, must have familiarized him with the Lennox, and the Lennox with him, and his subsequent education was calculated to make him forget that he had no right to look to the possession. James II., touched perhaps with some regrets for the ruin his father had caused, honoured this illegitimate scion of Albany and Lennox with marks of regard and affection, placed him at one of the English universities, and when his edu-

It was natural, considering his birth and education, and the temper of the times, that Lord Avandale should cast a longing eye to the possession of the Lennox ; and it was easy, considering his sway in the kingdom, and his command of the chancery, for him to obstruct the legitimate heirs of his house in taking up their lawful inheritance. At the very commencement of the reign of an infant king, the order and justice contemplated by James I. when he established the chancery for the issuing of brieves, were not likely to receive full effect from a chancellor, whose interest it happened to be in this particular case to withhold them. Here, then, was the obstacle in the way of all the heirs-general of Earl Duncan when they wished to establish their right of succession immediately after the death of the Duchess Isabella.

As might be anticipated, the first movement for redress was made by the junior branch of the representation, because that happened to be the most powerful and wealthy. We find that, in the year 1460, John Lord Dernely took instruments on requiring Lord Avandale, chancellor, to issue brieves to serve him heir in one-half of the Lennox ;* and it also appears, that Dernely was unsuccessful in this attempt to obtain his

garite et Katrine de Lawder filie quondam Georgei de Lawder burgenses dicti burgi ac Elizabeth et Issobelle filie etiam et heredes dicti Georgei." This deed regards the rights of the parties to the lands of " Sornfallow, Grenhill, Brownisfield," besides certain tenements in Edinburgh which belonged to the said George Lawder ; and which are resigned in favour of " Sir Alexander Lawder of Halton, Knight, son and heir of the late William Lawder of Halton." The mother of John Napier of Merchiston, who married the heiress of Rusky, was Elizabeth Lawder, said to be a daughter of Lawder of Halton.

* "*Ad inquirendum de quibus terris et annuis redditibus cum pertinentibus quondam Duncanus comes de Lennox pater Elizabethæ de Lennox avæ dicti Joannis obiit ultimo vestitus et sasitus infra dic-*

inheritance. At this time, however, Dernely did not proceed a step beyond his legal right. All that he demanded was the issuing of brieves for an inquisition into the state of the succession, and his own propinquity to the last Earl, as one of his heirs-general ; but he neither pretended right to the honours, nor to the principal message of the fief.

Failing in this legitimate endeavour, he next had recourse to the statutory remedy of complaint to the King and Parliament, whom he addressed in a petition praying to have “ conusabill brieves, &c. tuiching the lands of half of the earldom of Levenax ; of the quhilk as yit I can get na expedicione nor outread, &c. And that ye mak, na ger mak, na stoping to me in the serving of thame, sua that I may be servit in alls far as affers. For the quhilk to be done to me, I profir to hald a hunder spers, and a hunder bowis dewly bodin for a yere on myne awin expensis, in quhat part of this realm that ye will charge me in resisting of your rebills and enemys whatsumever thai be.”*

Several facts important to the present inquiry are proved by the tenor even of this petition and complaint. *First*, that the succession was capable of being taken up by service, and consequently had not been annexed to the crown by forfeiture. *Secondly*, that at this time Lord Dernely put forth no pretension beyond his right to the half of the lands, and did not claim the chief message. *Thirdly*, that he was obstructed by the

tum vicecomitatum, et si ipse Joannes Stuart esset unus de legitimis hæredibus dicti quondam Duncani.” The instrument is dated 16th December 1460, and the procurator for John Lord Dernely is his brother Alexander Stewart.—*See Andrew Stewart's History of the Stewarts*, p. 185.

* Case for Woodhead, p. 67, quotes original deed in possession of Duke of Montrose.

chancellor in getting the brieves he demanded, and found it necessary to condescend to make special offers of military service to overcome the impediment. Powerful as he was, this nobleman could not effect an entry to his lands in the Lennox until ten years had elapsed from the date of this petition ; and if he could not, far less could either of the coheiresses of Rusky, though married to gentlemen of high character and consideration in the state.

The mystery of this apparently inaccessible *hereditas jacens* seems to be fully explained by the circumstances attending a liferent grant of the whole Lennox, which Avandale at length managed to secure to himself in the year 1471.

After the death of the Duchess Isabella, and Dernelly's first attempts to be served, state matters of importance, in which the chancellor took a lead, probably interrupted his views upon this fief. Several foreign embassies occurred, in which his talents were called into active requisition ; and especially in 1468, he conducted that to Denmark for negotiating the marriage of James III., upon which occasion he was accompanied by the comptroller of the household, Sir Alexander Napier of Merchiston, the father-in-law of Elizabeth Menteith. The perfect success of this mission greatly increased the chancellor's influence, and his reward seems to have been a liferent gift, under the Great Seal, of the Comitatus of Lennox. The grant is dated at Edinburgh, 4th May 1471, and bears to be from the King to Andrew Lord Avandale, his chancellor, for the singular favour and affection which his majesty entertains for him, as well as for services rendered to the King and to his progenitor, of the lands, tenandries, and profits of the earldom of Lennox, &c. to be as fully and freely enjoyed by him,

during the whole period of his life, as was wont to be enjoyed by the Earls of Lennox themselves.*

The chancellor's next object was to fortify himself in this grant, which being made during the King's minority, and to the prejudice of the legitimate heirs of the earldom, was in manifest danger from the law of general revocation, whenever the King arrived at the ripe age of twenty-five years. Avandale's preliminary step, however, was to remove as far as possible the disadvantages of his birth. He obtained letters of legitimation to himself and two of his brothers, by which a right of general succession was thrown open to them,† and it is not unlikely that he contemplated at some future period the entire exclusion of the heirs in whose possessions he had established himself. At all events it is obvious, from the original titles still extant, that he would not suffer any of them to establish their right to a feudal investiture in the Lennox, without submitting in the most formal manner to his full enjoyment of the fief so long as he lived.

About the beginning of the year 1473, John Haldane of Gleneagles was on the eve of an embassy to Denmark. Despairing probably of obtaining the titles of his wife, Agnes Menteith, made up to her quarter of the Lennox, or, it may be, having particular views of his own in the matter, which the state of the times was very apt to engender, he contrived, *in the absence of all the other heirs, and without any party being heard for their interest*, to obtain a charter to himself of a quarter of the Len-

* *Mag. Sig.* vii. 193.

† In the Case for Woodhead, Lord Avandale's legitimation is quoted of date 17th September 1479. But I find these letters of legitimation in the record of the Great Seal, dated so early as 28th August 1472.—*Mag. Sig.* vii. 249. They were repeated in 1479.

nox, in terms upon which I shall elsewhere have occasion to comment. This charter contains an express condition that Haldane shall guarantee to Lord Avandale the undisturbed enjoyment of his liferent so far as Haldane's charter extended. Upon this he takes infeftment, and immediately sets out upon his embassy to Denmark, fortified also with royal letters of protection from all pleas and suits in his absence, and for forty days after his return. Agnes Menteith, however, is not served to her heritage in the Lennox, nor is she even alluded to in her husband's charter.

We have next to observe the steps taken by Lord Dernely, which in like manner were obviously controlled by the views and schemes of the chancellor.

James III., in a deed under his privy seal and sign manual, dated 21st June 1473, just three months after the date of Haldane's charter, declares that John Lord Dernely had resigned into the King's hands, the lands of the lordship of Dernely, and others, there to remain until the said John Lord Dernlie, "his entrie to his part of the lands of the erledom of Levinax, and thereafter quhill he haif infeft and giffen to our weil belovit cousing and chancelar Andro Lord Avindaill the said lands of the erledom of Levynax in liferent, as frely and in siclyke forme as our foresaid chancelar had the samyn lands of us befor; and also quhill our cousing Wilzam of Edmonstoun of Duntreath be made sickker be the said John Lord Dernale for his part;" and it is further declared, that, upon Avandale and William of Edmonston being made secure and content, his majesty shall immediately restore to Dernely all the lands held in security of this agreement, and infeft him therein as fully as he held them before, without cost or impediment.*

* A notarial transcript of this deed, taken by order of Lord Der-

Thus we see the scheme of the chancellor's security progressing, and it only remains to investigate the titles of Elizabeth Menteith in order to find it complete.

Merchiston's lady had made up titles to her estates in the Menteith so early as 1454. Yet I find among the Merchiston papers a precept of seisin, which clearly indicates that the lands of Rusky had been resigned in security into the King's hands about the very time of the transaction with Dernely. The precept bears, that Elizabeth Menteith had again resigned into the hands of James III. her lands of Rusky, &c. in security for the fulfilment of certain special agreements,—that the stipulation had been fulfilled,—and that the King's precept issued in consequence for reinvestment.* The seisin taken upon this is dated 8th May 1473; and although the precept does not mention what the special agreements were, there seems no room to doubt that it refers to the security of Avandale's liferent, as a condition of Elizabeth Menteith's entry to her share of the Lennox. Accordingly, the original deeds still extant show that her titles to the Lennox were made up immediately after the date of the above precept.†

nely, in September 1477, is in the Montrose charter-chest. — See Case for Woodhead, p. 67, 68, and Andrew Stewart's History, p. 183.

Sir William Edmondstone was married to *Matilda Stewart*, a natural daughter of James of Albany, and consequently he was brother-in-law to the chancellor.

* “*Que quidem terras de Rusky cum pertinentibus fuerunt dicte Elizabeth hereditarie, et quas eadem Elizabeth non vi aut metu ducta, &c. in manibus nostris sursum reddidit, pureque et simpliciter resignavit et traxit easdem nobis in securitatem donec certa appunctamenta per eam obsinata fuissent, que secundum formam eorundem plenarie perimplevit.*”—*Merchiston Papers*.

† Elizabeth Menteith's retour as one of the heirs-general of Duncan Earl of Lennox, in one-fourth part of the earldom, is dated 4th November 1473. Upon this she is infeft 16th November thereafter. —*Merchiston Papers*.

Thus it is obvious that, upon the demise of Duchess Isabella, Lord Avandale, chancellor, threw obstacles in the way of the immediate entry of all the heirs-general of Earl Duncan,—that he then obtained for himself the most ample liferent grant of that fief possible, and also letters of legitimation,—and, finally, allowed the heirs to make up their titles about the same period, (with the exception of Agnes Menteith, whose husband took a special charter to himself,) upon the express condition of their homologating his liferent, and guaranteeing the possession held by himself and his brother-in-law Duntreath.

This history explains the circumstances of the Lennox remaining so long in *non-entry* after the death of the old Countess, and affords another sign of the times in reference to the difficulties which a female coheiress had to encounter in her legal claims upon the lofty rights and privileges of a *Comitatus*.

CHAPTER VI.

FIRST ATTEMPTS OF JOHN LORD DERNELY TO APPROPRIATE THE HONOURS OF LENNOX—HIS IRREGULAR SERVICE REDUCED IN A PLEA WITH HALDANE OF GLENEAGLES—STATE OF THE TITLES TO THE LENNOX AT THE CLOSE OF THE REIGN OF JAMES III.

The ambition of Dernely, who was as covetous of the honours of the Lennox as Lord Avandale was of the lands, backed by the influence derived from his distinguished and warlike ancestry, his wealth and high connections, rendered him a powerful rival to the chancellor in any views which the latter might entertain towards this succession, and a dangerous coheir to the females, whose legal interest in the fief was superior to that of Dernely. We find, accordingly, that this nobleman endeavoured to obtain the object of his desire in a sinister manner, which failed at first, not from any opposition on the part of the Crown, but from the baseless nature of the pretension even in a question with another less powerful coheir, and from the very irregular manner in which he attempted to make it good. In order to appreciate the nature of Dernely's proceedings it may be necessary to call to mind the forms of process by which at this period the heirs-general of Earl Duncan might establish their feudal rights.

Briefes, by the law of Scotland, prior to the erection of

the College of Justice in the year 1532, came in the place of all summonses before the ordinary courts. A brief was an instrument issuing from the Chancery, and directed either to the Justiciary of Scotland, or to the Judge Ordinary, ordaining him in the name of the King to try the matter set forth in the brief, by a jury, or inquest. Upon the verdict of this jury the claim was determined. The brief might either be simply declaratory of a right in the party obtaining it, or might conclude specially against some particular defender. In the former case it was a brief *not pleadable* and *retourable*, that is to say, it was only necessary to publish or proclaim it at the head burgh of the particular jurisdiction, without special citation of defenders, and the verdict of the jury was returned to the Chancery by the judge to whom the brief had been addressed. In the latter case it was a brief *pleadable* and *not retourable*, because the defender was specially cited, and the brief became the ground of a proper action before the competent judge, who pronounced sentence in terms of the verdict of the jury, and made no return to Chancery. Brieves of inquest or service of heirs, of tutory, idiotry, &c. were retourable brieves. But the brieves of right, of mortancestry, of terce, of division of lands, &c. were all directed against some defender specially cited, and were therefore pleadable and not retourable.

In terms of the ruling investiture of the Lennox, the two coheirresses of Rusky who represented Margaret of Lennox, and Dernely who represented Elizabeth of Lennox, were each of them entitled to the character of one of the heirs-general of Earl Duncan, because his daughters Margaret and Elizabeth were coheirresses. Consequently, none of these representatives of Margaret and Elizabeth of Lennox required to be specially called

in defence against a simple brief of inquest, at the instance of any one of them. They might all and each establish their respective characters, of heir-general, feudally in the Lennox, without affecting the correlative rights.

But the case was otherwise in any attempt to divide the lands, or to decree to any one of these parties some particular portion of the fief in property. According to the territorial principle, which certainly then existed in Scotland with regard to titles of honour, the legal mode of taking up a dignity was to become feudally invested in the *Caput Comitatus*, or principal portion of the particular fief, including the chief mansion-house or messuage. According to another indisputable principle of the law of Scotland, titles of honour were indivisible rights, which, in the case of coheiresses, were regulated by the law of primogeniture, and belonged to the eldest female or her representative. Consequently, in a process of division of the lands, the elder coheirress was entitled to claim as her portion that which included the messuage, and this claim could only be made effectual under pleadable brieves of division, to which all parties required to be specially summoned to appear for their interest.

We may now revert to what actually took place in reference to the possession of the Lennox. The illegitimate grandson of the Duchess Isabella had, for a time at least, excluded the legitimate grandchildren of that lady's younger sisters from the actual enjoyment of their respective portions, by securing to himself possession of the Lennox, an irregular and unjust proceeding, which placed him in the anomalous position of being infeft as liferenter in the whole of that *Comitatus*, without being able to assume the title of *Comes* (to which Lord Avan-

dale never put forth a pretension) though that ought to have been the natural consequence of his feudalized possession. No *brieves of division*, therefore, were issued from Chancery at this time, in favour of the coheirs of Earl Duncan. Elizabeth Menteith asserted and established her character, as one of the heirs-general of her great-grandfather, by the simple brief of inquest, of which the original retour to chancery, with the seals of the inquest attached, is still extant. Agnes Menteith, however, remained in apparency, and her husband seems to have preferred taking a charter to himself of one-fourth of the Lennox, which was the extent of his wife's share, but without any reference in his charter to that lady. Upon this he was infeft, which established his feudal interest in the Lennox to that extent.

One legal effect of Haldane's mode of procedure in this matter was to prevent any process of division of the lands until his return. For when he obtained his charter he also fortified himself with a well known and most important legal document of those days, namely, royal letters of protection against all suits during his absence and for forty days after his return. No brieves pleadable, therefore, could be effectually discussed until these letters expired, and they afforded a very certain ground of reduction of any process that might appear to have been instituted contrary to their tenor.

John Lord Dernely, however, as his whole public career proves, was not a man to stand upon ceremony with law or justice, and accordingly his service as an heir-general of Earl Duncan exhibits some curious irregularities. The brief of inquest which he demanded, and which at length issued from Chancery in his favour, when he had satisfied the conditions of the chancellor, ordained, and could ordain no more, that his *pro*

indiviso right to one-half of the lands of the Lennox should be determined by the jury, upon their being satisfied of the propinquity upon which his claim depended. But Dernely, it seems, having packed a jury of his personal friends and dependents, got a verdict retoured to Chancery, which found what ought not to have been found, and did not find that which ought. This retour, still preserved in the Montrose charter-chest, serves Dernely heir to Duncan Earl of Levenax in the *principal messuage* of the said earldom, and in the half of the property of the earldom. Again, it was the duty of a jury, under a brief of inquest, to determine upon sufficient evidence the propinquity which gave the legal character claimed; yet it has been asserted that in this retour, the name of the lady, through whom Lord Dernely claimed, is, for reasons which will be apparent afterwards, left doubtful.* It was at all events entirely be-

* The author of the Case for Gleneagles appears to have had access to the Dernely papers in the Montrose charter-chest, and it can hardly be supposed that the following account which he gives of Dernely's retour is inaccurate: "Darnly obtained briefes from the Chancery, and in a very irregular manner got himself served heir to Duncan Earl of Levenax, as his great-grandchild, lawfully descended of daughter to the said Earl, in the *principal messuage* of the said earldom, and in the half of the property of the said earldom. The original retour of this service is still extant in the hands of his Grace the Duke of Montrose, and is dated 23d July 1473. *It is still blank* in the name of the Earl's daughter, through whom he claimed, which shows with what uncertainty and inaccuracy it proceeded, and how hastily it was carried through, when the very point on which the whole hinged could not be fixed." *Case*, p. 2. The Case for Woodhead, however, quotes some of the clauses of this retour, without indicating a *blank* actually left, as above; "*de capitali messuagio et de tota et integra dimidietate dict. terr. Comitatusque de Levenax, &c. tanquam de seniori filia dicti quond. Duncani legitime descend.*" &c. p. 52. An-

yond the terms of such a brief to determine any thing about the particular parcel of lands to be allotted, as this was only a retourable brief, and not a brief of division, which was a pleadable brief. Yet here was a finding which enabled Dernely to obtain infeftment in the principal portion of the earldom, the *Caput Comitatus*, in the absence of all the other parties.

The precise period of Dernely's first assumption of the honours has been stated as a historical puzzle.* But a comparison of the dates of the various deeds obtained by him about this time, and of the different style adopted in each, will, when taken in connection with the above narrative, place the matter beyond doubt.

So long as he was not infeft upon any deed embracing the chief messuage of the earldom, he indulged not

drew Stewart in his History, p. 185, says, " Upon the 23d of July 1473, John Lord Dernely was actually served heir to Duncan Earl of Lennox, his great grandfather, as being lawfully descended from *Elizabeth, the daughter of the Earl*, in half of the earldom of Lennox, and in the principal messuage," &c. This author had all the Dernely papers from the then Duke of Montrose, and so uncandid a statement was scarcely to have been expected from a writer of his station and character. I have not had the advantage of inspecting the original retour, but, whether there be a *blank* left or not, it appears from Mr Hamilton's quotations, that Elizabeth's name is not mentioned, and that she is called "*seniori filia*," which certainly she was not. It was not essential to name her in the retour; but if a *blank* occurred it would seem to say that the jury had not been satisfied as to the connecting link. In the retour of Elizabeth Menteith, the relative expressions are, "*tanquam de juniore filia dicti quondam Duncani legitime descendens*;" which was perfectly accurate, as the Duchess Isabella was the eldest daughter.

* " With regard to Lord Darnly's assuming the title of Lennox, the precise period when he first began to do so does not appear." — *Case for Glencagles*, p. 4.

in the style of Earl of Lennox. The date of his irregular service is 23d July 1473. The date of his infeftment is 27th July 1473, wherein he is only styled "John Lord Dernely."* That infeftment being completed, however, and including expressly the principal messuage, the inevitable feudal consequence was the assumption of the title of the earldom. Accordingly, the date of the new royal charter which he then received of those other lands, resigned in security of Lord Avandale's liferent, is 6th August 1473, and in that charter he is styled "John Earl of Levenax."† Upon the 2d of October 1473, he has his newly acquired rights and privileges proclaimed in the usual form of a royal precept, ordaining the tenants of the Lennox to obey him as Earl.‡ Thereafter his name is to be found for a short time in the records of Parliament as *Comes de Levenax*, and not merely as *Dominus de Dernele*.

Thus the basis of Dernely's first assumption is manifest. It was no new erection in his favour of a forfeited fief. He took up the honours as his inheritance,

* Dernely Papers.

† It is recorded, Mag. Sig. vii. 59. Andrew Stewart, in the part of his history entitled, "General view of the steps taken by John Lord Derneley, for asserting his right to the estate and honours of the old Earls of Lennox," had missed the important link afforded by this charter; and Mr Hamilton, in his Case for Woodhead, is also in error, when he says, "Dernely, on the 10th October 1473, obtained a precept from James III., charging the free tenants and inhabitants of the earldom and lordship of the Levenax, to obey and answer to him; and in this deed he is *for the first time* addressed by the style of Earl of Levenax."—P. 68.

‡ Dernely Papers. Andrew Stewart, p. 185, says, the 2d of October. Mr Hamilton, p. 68, says the 10th of October. Both of these authors had the advantage of inspecting these papers, which came into the Montrose family with the Dernely property.

and by service to that ancestor who is said by modern historians to have fallen under forfeiture. He claimed the earldom under the existing investiture of his family, namely, the charter of confirmation by Robert III. to Earl Duncan, &c. with a remainder to the heirs-general of that nobleman. But, at the same time, Dernely only established his character by infestment taken upon a retour inept and reducible in every line of it, and which, accordingly, *was reduced*.

There is no evidence extant that Elizabeth Menteith took any steps against this usurpation, though it is possible, considering the lapse of more than three centuries and a-half since the period, that the evidence of resistance on her part may have been lost. Any such resistance, however, could only have been instituted upon the ground of a prior right to the earldom,—a dignity which, on the other hand, it is equally possible that Napier of Merchiston, though highly respectable, may not have felt himself sufficiently powerful to sustain, and, therefore, made no attempt to assert. Haldane of Glen-eagles, however, had, as will be shown, technical pleas to urge, totally apart from any claim to the honours of Lennox, and which were of a nature to be listened to, even in those days, with the highest respect.

This gentleman, who was of considerable account at court, seems to have been himself not a little imbued with the spirit of times, when *might was right*. Original deeds shall be afterwards quoted which justify the surmise, and which go to prove such to have been his disposition, at least in regard to the rights and privileges of his wife's sister Elizabeth Menteith, and her spouse John Napier. It was not likely that such a character would remain inactive when he really had the law on

his own side. But I must here state very generally the legal steps instantly taken by him on his return from his embassy, reserving a more particular view of the state of his process for the chapter which affords a reply to the modern case founded for Gleneagles upon the proceedings in question.

Upon his return in 1475, he protested against Lord Dernely's assumption of the honours of Lennox, but laid no express claim to those honours, either for himself or spouse. He complained to the King, that his royal letters of protection from all pleas, &c. had been treated with contempt, and broken by the proceedings of Dernely in his, Haldane's, absence,—that he had an interest as well as his spouse, Agnes Menteith, to have been specially called and heard in any process affecting an appropriation of the Lennox; and in evidence of this plea he produced his own charter to a *pro indiviso* quarter of that fief, upon which he had *been infest* before his departure. He also urged, as a secondary plea, the prior right of his wife Agnes Menteith, over Dernely, to the superiorities of the fief, and asserted, that Dernely had frequently offered Agnes *contentation* for these superiorities. But he made no allusion in this complaint to the rights of Elizabeth Menteith, or to the fact, that Dernely offered in like manner to that lady, contentation for her right to the superiorities of the Lennox. The King remitted this complaint to the Lords of his Council, and certain other Barons, who found, that Royal letters of protection in favour of his Majesty's ambassador had been infringed and broken by the proceedings of Lord Dernely; and upon this deliverance letters passed the privy-seal, reducing and annulling all the proceedings founded upon that nobleman's brieves of inquest, and placing matters

precisely in *statu quo* by expressly reserving *all rights to all parties*.

Haldane's protest, with which he commenced his attack upon the service of Dernely, is dated 26th April 1475.* A Parliament was held on the 20th November following, in which Dernely still sat as "Comes de Levenax." On the 4th of December following, the King granted a commission of lieutenancy, "Johanni Comiti de Levenax."† On the 12th of January following, (that is still in the year 1475, according to the Scottish calendar of that period,) the letters of reduction referred to above pass the privy seal, and in these letters he is only styled "John Lord Dernely." On the first of July 1476, six months after this decree of reduction, and seven after the date of the commission of lieutenancy, a new Parliament was held, and the first person named as taking his seat, after the *Comites* and among the *Dominii*, is "Dernele."‡

For thirteen years thereafter, a fact not attended to by the historians of Scotland, in every public record of that nobleman's name extant, he is styled Lord Dernely, and not Earl of Lennox, until the first Parliament of the succeeding reign in 1488, when he reappears under the higher dignity, after a progress of events which, as we shall see, was favourable to his usurpation. During the interval, some private and fruitless attempts to compromise matters with Haldane of Gleneagles occurred, of a very confused and irregular nature, to be noticed in the sequel.

* Gleneagles Papers.

† "*Rex dedit literam locum tenentis Johanni Comiti de Levenax infra bondas et vic. de Renfrem, Are, Wigtoune, &c.*—Mag. Sig. vii. 353.

‡ See the Records of the Scottish Parliament of the periods.

Thus between the period of the death of Duchess Isabella about the year 1460, being that in which James II. was killed, and the period of the death of James III. in 1488, the rights and pretensions to this Comitatus remain in the following extraordinary position :

1. It is not annexed to the Crown, either by forfeiture or usurpation, but is left to be taken up by the heirs-general of Earl Duncan, in terms of the remainder stipulated in the marriage-contract of his eldest daughter, and confirmed by the charter of Robert III.

2. In the year 1460, probably shortly after the death of the Duchess Isabella, Lord Dernely attempts to obtain brieves of inquest to be served to his share of the Lennox, but is obstructed in this legal claim by the chancellor himself, the illegitimate grandson of the Duchess.

3. The Lennox remains in *non-entry*; and at length, in the year 1471, the chancellor obtains a Royal grant (the King being a minor) of a liferent possession of the whole fief.

4. In the year 1472, the chancellor obtains letters of legitimation under the Great Seal,—a process which materially improved his hereditary status, but could not confer a right to inherit honours.

5. In April 1473, John Haldane obtains infeftment upon his special charter to a fourth part of the Lennox, *pro indiviso*, and departs on his embassy.

6. In July 1473, Lord Dernely is retoured in the principal messuage and one-half of the Lennox, in the irregular manner narrated, and assumes the title.

7. In November 1473, Elizabeth Menteith obtains her retour in a *pro indiviso* quarter of the fief, as an heir-general of Earl Duncan through his younger daughter,

the truth and perfect regularity of which process is never questioned at any period.

8. Agnes Menteith remains in *non-entry* ; but in 1475 her husband returns from his embassy and reduces Lord Dernely's service, still, however, without assuming the title of Earl of Lennox, either in virtue of his own charter, or in right of his wife.

9. For thirteen years thereafter, being the remainder of the reign of James III., no Earl of Lennox appears upon record. But the Chancellor Avandale continued to enjoy possession of the lands so long as he lived, which was until the year 1488.

CHAPTER VII.

HISTORY OF JOHN LORD DERNELY'S SECOND USURPATION OF THE HONOURS OF LENNOX—HIS CONTRACTS OF EXCAMBION WITH THE OTHER COHEIRS—FINAL PARTITION AND SETTLEMENT OF THE FIEF.

THE last ten years of the reign of James III. are turbid with civil broils, increasing to the deadliest pitch of civil war, and concluding in 1488 with the battle of Sauchieburn, on his flight from which the monarch was murdered. Of this turbulent period the prominent features are, the slaughter of the King's favourites by the disaffected nobles at the bridge of Lauder,—the temporary usurpation of the crown of Scotland by Alexander, Duke of Albany, the King's brother,—and lastly, an insurrection whose crisis, at the battle above-mentioned, brought a young Prince under the standard of rebellion against his own father, and construed loyalty to the old monarch as treason to the new.

Amid these stirring events, neither the chancellor Avandale, nor Lord Dernely, were idle; and the power of the latter seems to have increased as that of the former was on the wane. Upon the 11th of April 1481, Dernely was appointed to the high and important office of warden of the west march,* while the Earl

* Mr Tytler, in his History, Vol. iv. p. 265, and under the year 1481, says, "The wardenship of the east marches was committed to the Earl of Angus, that of the west to Lord Cathcart." But I have followed the Parliamentary records of the period, which bear, "Item,

of Angus commanded the east. This appointment shows how high Dernely then stood in the King's favour, and ranked in the realm, and how absurd it is to suppose that, had the earldom of Lennox ever been specially bestowed upon him, or that had he, in taking it up as his inheritance, been supported by a shadow of right, he would at this time have been only styled *Lord Dernely*.

In the year 1482 the conspiracy broke out against the King and his favourites, and, in the ranks of the conspirators, noblemen are found who had hitherto been the most loyal supporters of the Crown. Lord Avandale, for the first time and apparently the last, turns against the sovereign who had heaped upon him wealth and honours, and whose chancellor he had been for two-and-twenty years. Angus, warden of the east march, headed the conspiracy, and Dernely warden of the west joined him. To this faction the chancellor added the weight of his talents, and a double portion of ingratitude. That both Avandale and Dernely had upon this occasion deserted their sovereign is stated by Pitscottie, and confirmed by the records. Upon the 22d July 1482, the King was conveyed to Edinburgh Castle a prisoner, and in the hands of rebels, though respectfully guarded. Upon the second of August thereafter, as recorded in Rymer, a deed of obligation was entered into by the following "Magnates Scotiæ," William Archbishop of St Andrews, James Bishop of Dunkeld, Andrew Lord Avandale, *chancellor*, and Colin Earl of Argyle, for the protection and indemnity of Alexander Duke of Albany, (the King's brother and most insidious enemy) "being in England, and tending to the Trone of Scotland." The

our Sovereign Lord has ordained that the *Lord Dernely* be warden in the west borders." It will also be observed that he is not styled Earl of Lennox.

noblemen who sign this deed declare that they and the other nobles of the realm, "sall cause our soverane lord frely to gif and grant" to the Duke of Albany "all his landis, heritagis, strenthis, houses, and offices quhilk he possessit the day of his last parting furth of the realm of Scotland."* This ingratitude on the part of the chancellor appears to have been punished by the King to the utmost extent of his constrained power. Upon the 25th of the same month in which the above deed is dated, a charter passed the Great Seal of James III., the first witness to which is John Laing Bishop of Glasgow, "chancellorio."† We have thus precisely the period, and probably the cause, of Avandale's deprivation of that high office, by which for so many years he held sway in the state.‡

* *Fœdera*, xii. 160.

† Mag. Sig. x. 88.

‡ Mr Tytler, Vol. iv. p. 276, speaking of these events, says, "There was no difficulty in effecting a full reconciliation between Albany and the King's party, which was headed by the Chancellor Evandale," &c. But surely the deed to which our historian alludes, and in which those noblemen engage to *cause* the King to restore Albany to all his "*strengthis*," is evidence that they favoured the faction opposed to the King. Again, speaking of the siege of Edinburgh Castle, which occurred 29th September 1482, and the result of which was to give the Duke of Albany the custody of the King, Mr Tytler observes; "The unhappy King, thus transferred from one prison only to fall into a durance more intolerable, had yet left to him a few friends, in the Archbishop of St Andrews, the Chancellor Evandale, and the Earl of Argyle; but for the present it was impossible for them to make any effectual stand against the power of Albany, and they fled precipitately to their estates; Evandale was *in consequence* deprived of the chancellorship, which was conferred upon Laing Bishop of Glasgow." P. 278. But, with deference, it seems impossible to adopt this theory. Albany was appointed Lieutenant-General of the Kingdom only in December 1482. Now the records prove that Avandale had been deprived of the chancellorship between

In the following month (29th September) the memorable siege of the Castle of Edinburgh (in which the King was confined) occurred. And now the fiery and fickle Dernely seems suddenly to have separated himself from the conspirators, in order to become the body guard of that sovereign whose favourites he had lately assisted to hang over the bridge of Lauder. There is a charter under the sign manual of James, and dated 19th October 1482, which narrates that, at the King's particular desire, Lord Dernely, and others about his royal person remained with him day and night in Edinburgh Castle, to protect him from personal injury, and from certain nobles and other disaffected persons who had conspired his death; and moreover, Dernely and his compatriots are declared to be *true lieges*, and absolved from all previous *charges of treason*, a clause of indemnity very necessary under the circumstances.*

In the following year, 1483, the Albany faction was subdued, and in the next completely crushed. Lord Avandale was not restored to the chancellorship, but he appears to have regained the confidence of the facile monarch to the extent of being employed in council and foreign negotiation. Dernely is named immediately after Lord Avandale in the roll of *domini* (not *comites*) to whom the powers of Parliament are committed on the 27th June 1483.

the 2d and the 25th of August preceding. The deprivation, then, was before the siege of Edinburgh Castle by Albany, and not after, as Mr Tytler records it; and could not therefore have been "in consequence" of Albany's partial success. Besides, were Mr Tytler's view correct, the King, who regained his power very soon afterwards, would have *restored* Avandale to the chancellorship.

* See Appendix to Andrew Stewart's History, where the deed is printed.

But that turbulent nobleman, whose whole life seems to have consisted in sudden changes and lawless commotion, though warmly attached, it is said, to the person of James III., would never evince his affection by steady allegiance; and at the hour of that monarch's fall he was found among the ranks of his destroyers.*

Immediately after the date of the conflict of Sauchie, which took place on the 11th June 1488, Lord Dernely still retained that minor style and title, though Lord Avandale was recently dead, and his liferent grant no longer burdened the Lennox.† Upon the 12th July 1488, one month after the death of James III., Elizabeth Menteith, *relict* of John Napier of Merchiston, obtains a decree of the Lords of Council to secure obedience to her in her quarter of the Lennox. Among the Lords who compose the sederunt upon this occasion is John Stewart, who sits as "*Dernle*" and not as Levenax.‡ Of the same date letters pass the privy-seal of James IV., in terms of this decree, in favour of Elizabeth Menteith; and the first witness to their proclamation is Alexander Stew-

* There are letters of safe-conduct, recorded both in the *Fœdera* and *Rotuli Scotiæ*, of date 5th May 1488, the month preceding the battle of Sauchie, from Henry VIII. "*Ambassiatoribus Scotiæ.*" Among these is "Mathew Stewart, *Magistrum de Dernely.*" These were the ambassadors of the faction against James III. Ridpath, in his *Border History*, p. 457, notices this safe-conduct, and puts the question, "Was Mathew Stewart of Dernlee son to the Earl of Lennox?" The answer is, he was son to *Lord Dernely*, that nobleman not resuming the title of Earl until the Parliament of July following, when James IV. commenced his reign.

† One of the witnesses to a charter of James III. dated 11th March 1487, being the close of that year, is "*Andrea Domino Avandale.*"—*Mag. Sig.* x. 136. I cannot discover his name in any record, public or private, beyond this month of March 1487-8.

‡ *Acta Dom. Con.*

part of Avandale.* Obviously this proceeding of the lady of Rusky (as she was generally styled) was in consequence of Lord Avandale's liferent having lapsed, and as a preliminary step towards the securing her own peaceable possession and full enjoyment of the lands.

The conduct of this lady with regard to her patrimonial rights, supposing her to have been the eldest co-heiress of the Lennox, appears to have been dictated by prudence and spirit, though controlled by necessity. She appears to have made no struggle for the dormant earldom, but at the same time fortified her right to a fourth part of the lands by every form of law requisite to protect her possession. But she was a widow, her eldest son was a minor, and her husband and his father had never swerved from that loyalty to James III. which was apt to be construed into treason at the commencement of the reign of his son.† Lord Dernely, on the other hand, was now a distinguished leader among the popular party which surrounded the young King, and, accordingly, the records instruct that he actually took his seat as Earl of Levenax in the first Parliament of James IV. held at Edinburgh upon the 6th October 1488, just four months after the battle of Sauchie. His pretension, though based upon nothing but the fact that the period was most favourable for his usurpation, rises at once to the loftiest pitch. Upon the 10th of the same month in which the Parliament met he obtains, under the style of Earl of Levenax, a royal commission, bestowing upon him and his son and heir, Mathew Stewart, the important custody of the Castle of Dunbarton ; and by the eighth act of the Parliament 1489, the Earl of Levenax, the Lord Lyle, and Mathew Stewart, are named

* Merchiston Papers.

† See Memoirs of Merchiston.

as commissioners to maintain peace in the districts of Renfrew, Bothwell, Glasgow, Kilbride, and Avandale.

Yet in the summer of that same year, Dernely incurs a doom of forfeiture for being in arms against James IV. ; and at that period his son Mathew, and his friend Lord Lyle, hold the Castle of Dunbarton against the very government that had committed it to their keeping. It was in this rising that the Lord Forbes made himself conspicuous by riding the north, with the bloody shirt of the late King displayed as the beacon and banner of insurrection. Dernely, on his way to join this nobleman, was surprised in his encampment at Tilly-Moss by the Lord Drummond, and completely routed. This defeat crushed the enterprise, and "in the month of June 1489," to quote the words of Andrew Stewart, "a sentence of forfeiture was passed, in the Parliament of Scotland, against John Earl of Lennox and his son Mathew, and against Robert Lord Lyle ; but the act of forfeiture itself is not now to be found in the records of Parliament, for it was upon the 5th February 1489-90, rescinded and annulled by the King and Parliament, and in consequence thereof, his Majesty, upon the 6th of that month, issued a precept directed to the clerk-register, ordering him to take furth of the books of Parliament the said process of forfeiture, and to deliver the same to the said John Earl of Lennox, and to Robert Lord Lyle, and to destroy the said process in such a way that it be never seen in time to come."* The whole of this proceeding proves the restless turbulence of Dernely, his utter disregard of law and order, and at the same time, his great power and influence in the state.

Having thus escaped the pains of rebellion, and feeling himself more powerful than ever, Dernely now vi-

* Andrew Stewart's History, p. 192.

gorously commenced, in the face of an existing decree of the privy-council which had silenced his claim for thirteen years, to render his dominion in the Lennox as certain as power without right could effect. It was his object to obtain complete feudal command of the whole Comitatus, by attaching to himself all the superiorities, patronages, and liberties of the fief ; and also to effect such a compromise with the weaker parties, having a prior right to the honours of Lennox, as might afford at least a colour of legality to the assumption he had already perpetrated.

Elizabeth Menteith had followed up the decree of obedience proclaimed in her favour, by taking out brieves of division from chancery, for the purpose of having her special share of the lands allotted by the verdict of a jury. The instrument taken upon producing her brieves, and demanding an inquest, is dated 26th of March (day after New-Year's day) 1490.* But upon the 17th of May following, she had been persuaded or concussed into a contract of excambion with Dernely, the tenor of which very plainly shows his anxiety to establish himself in a loftier position in the Lennox than was his birth-right.

This curious document bears to have been concluded at Glasgow upon the 18th day of May 1490, " between a noble and mighty Lord John Earl of Lennox and Lord Dernely, and Mathew Stewart his son and apparent heir, on the one part, and Elizabeth of Menteith, the spouse of umquhile John Napier of Merchiston, as one of the parceners and heirs of the said earldom, and Archibald Naper her son and apparent heir, on the other part, anent the division and allotment of the said Elizabeth's part and portion of the lands of the said earldom of the Levenax, and also for her part ' of the pro-

* Merchiston Papers.

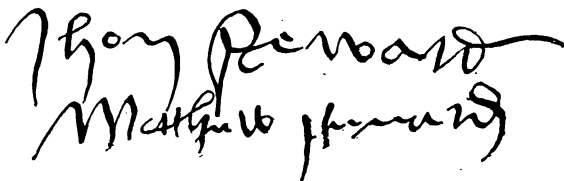
fyt and commoditevyys that mycht fall till hir, or till hir aeris, of the superiorite and tenandry of the fre tenandis of the said erldome, be wardis, mariages, relevis, courtis, eschaetis of courtis, be resoun of superiorite, profytis of blanchfermys, offices of heritage, advocacionis, donatouris of kirks, chapellis, presentationis of provestriis, chanouriiys, personagis, chaplanriis, and otheris patronagis quhatsumever,' " &c. There is not a single expression in this contract which would convey to modern conceptions the idea of a transference of the dignity of Earl, nor is the sovereign made a party to the transaction; but it must be confessed that the clause quoted, as well as other clauses in the various deeds connected with this transaction, is of the most sweeping description, and, in a territorial sense at least, involves all the highest rights, privileges, and dignities appertaining to the fief.

In consideration of this sacrifice on the part of Elizabeth Menteith, Dernely on his part grants and concedes that she shall obtain in property a quarter of the lands of the whole Comitatus, with its woods, and islands, fishings in waters and lochs, &c. &c. and this fourth part is "to be lade and assignit hale and togidder be the self," and to be secured to her by "vigour and autorite of the Kyngis breffis of depertysing." Moreover, for the rights of superiority yielded, a separate estate of lands in the Lennox, adjacent to the quarter to be allotted to Elizabeth Menteith, is granted to her, over and above her original share. Both parties are taken bound not to part with their lands to strangers, nor to admit such into the fief, but, if constrained by necessity or otherwise to sell or alienate in any manner, "that it sal be offerit ilkane of thaim till otheris apon resonabill and sobyr price,"—a condition much more likely to benefit Dernely

than Merchiston. And finally, that, “the sade Erle and Mathew his sone sall, *for the favouris schawin in this concorde*, help, supple, menteyn, and defende the sade Elesabeth, and Archbalde hir sone, and thar ayres, in all thar causis leyfull and honest, and in speciale in the pessabill brukyng and possedyng of hir quarter of the Levenax and landis before expremyt in all things, but (*i. e.* without) *fraude or gyll*.”*

The necessary steps to perfect this arrangement by division and appropriation according to the forms of law, were immediately adopted by Elizabeth Menteith, who at the same time took care that John Haldane and his son should be present and exhibit a formal consent to the process of division.† But there can be little doubt that the contract of excambion of her birth-right was a

* The *fac-similes* of the signatures of these two first Earls of Lennox of the Dernely race, appended to this deed, will interest the reader. Mathew was he who commanded one of the divisions of the Scotch army at Flodden.



The image shows two handwritten signatures in a cursive script. The top signature is 'John Stewart' and the bottom signature is 'Mathew Stewart'. Both are written in dark ink on a light background.

There are also appended their seals ; bearing first and fourth three fleurs de lis ; second and third, a fesse chequé, surrounded of a border charged with buckles ; on an escutcheon, the *plain saltier* and roses ; on the seal of Mathew a label of three points.

† All the original documents connected with this process of division are among the Merchiston papers. The retour of division to the lands lying in Dunbartonshire is dated 21st May 1490, and to the lands in Stirlingshire, 24th May thereafter. She is styled in these deeds “Elizabeth Menteith Lady of Rusky, ane of the portionaris of the erldome of the Levenax.” She is put into possession of the lands, *nominatim* allotted to her, by the sheriff, who, in token and name of possession, delivers a wand to her in open court.

measure to which this lady and her son were constrained by the determined and lawless grasp which Dernely and his son had fastened on the earldom.

A *charter of excambion* was then granted to her of the lands which were the price of the rights and privileges she had yielded. This runs in the name of Mathew “Comes de Lenax,” and is ratified by his father, also styling himself Earl of Lennox,—a fact which may be thus accounted for: The charter of excambion is dated 17th September 1490.* The *contract*, in which Mathew is not styled Earl, is in May previous. Now on the intervening 1st of June 1490, Dernely having *resigned* the Earldom of Lennox, Lordship of Dernely, &c. into the hands of James IV., in favour of his son and heir Mathew, in fee, and of himself and spouse, Margaret Montgomery, in liferent, obtained a new charter to that effect.† Hence, in accordance with the territorial principle, both father and son being infeft in the *comitatus*, took the title of *Comes*.

This charter of excambion grants to Elizabeth Menteith and her heirs, the two towns of Blarnavadis, with the pertinents, lying in the earldom of Lennox and county of Stirling, and the fishing with one boat, and nets in proportion, over the whole of the still water of the lake of Lochlomond, (*lacu de Lochlomond*,) excepting the fishing in the water of Leven, and the firth of Lochlomond, which are reserved to the granter and his successors. The grant is in perpetuity to a noble lady and our cousin, Elizabeth, Menteith of Rusky, for excambion made to us by her; and the rights yielded are stated to be the fourth part of the tenantry of the whole earldom of Lennox belonging to her, with the pertinents, and with the advowsons and right of patronage

* Merchiston Papers.

† Andrew Stewart's History.

of the whole churches of the earldom of Lennox, with the fishing of the water of Leven and the entry to the still waters of Lochlomond, and half the island of Inchtavannach and Castle-gyle, with all the pertinents belonging to the said Elizabeth by right of heritage in the Lennox. Upon this charter she obtained infeftment on the 22d September 1490.

Having thus arranged matters with Elizabeth Menteith, Dernely's next object was to quiet the claims of Haldane of Gleneagles. Agnes Menteith was by this time dead, and never having made up her titles to the Lennox, James Haldane her eldest son, proceeded to do so in his own person in the beginning of the year 1490. His retours are precisely in the same general terms as Elizabeth Menteith's, nor do they indicate the slightest superiority of claim upon his part. The term of non-entry of the lands since the demise of his great-great-grandfather Earl Duncan, to whom he serves, is stated at sixty-six years, corresponding to the interval between the date of the retour and the Earl's death. In the beginning of the year 1492, James Haldane took out brieves for a division of the *whole earldom*, as between him and Dernely. Upon the 14th June of that same year, Elizabeth Menteith, to check this assumption, obtained letters under the privy-seal, to be afterwards noticed, for the protection of her own interests in the matter. Upon the 19th of the same month, John Haldane appears as procurator for his son James in the Sheriff-court of Dunbartonshire, and produces brieves of division of the remaining *three quarters* of the Comitatus, between James Haldane and Dernely, which accordingly takes place, with the express reservation and protection of the other quarter already allotted to Elizabeth Menteith.

This has been supposed finally to have settled the partition of the Lennox among the heirs-general of Earl Duncan. But there is a process, the date of which, as shall be afterwards shown, has hitherto been mistaken, which certainly occurred subsequently to the process of division above-mentioned. It is a new summons of reduction, (dated 2d February 1492, that is, subsequent to June 1492, as the year then commenced on the 25th March,) of Dernely's service, already reduced, but upon which he had again resumed the honours. This is called in court on the 15th of June thereafter, that is, in 1493. It is there delayed of consent of parties until October following. But in the interval "there is a commission dated 8th July 1493 by John Lord Dernely, therein designed Earl of Lennox, to Mathew Stewart, his well beloved son and apparent heir, and to John Stewart of Henrieston, also his son, to go to the kirk of Drymen on the 9th of July then instant, and to commune and agree with John Haldane of Gleneagles, anent the avail of the Earldom of Lennox."* Accordingly, on the 11th July 1493, an indenture is concluded at Drymen betwixt "ane nobile and myty Lord Johnne Erle of Levenax, Lord Dernle, and Mathew his son, apperand ayer and fear of the said Erldom on the ta part, and John Haldane of Glenegass, and James his son, apperand ayer and ane of the parsonars fears of the said Erldom, &c. on the tother part," &c. This contract is precisely of the nature of that concluded with Elizabeth Menteith and her son in 1490. It names, however, the lands which are to compose Haldane's quarter of the fief; and adds certain other lands by way of excambion "for the hale and full contentatioun of all

* Andrew Stewart's History, p. 186.

the rycht clame and interest of the said James, his ayers or assignees, or that may be had in or to the properte or the superiorite of the said erldom, or profyt of the samyn," &c.*

This completes the long delayed partition of the Lennox among the coheirs of Earl Duncan, leaving the youngest, but most powerful branch, in the undisputed possession of the honours.

Elizabeth Menteith, being advanced in years, resigned in 1507 her great possessions in favour of her son Archibald Napier, who subsequently, upon his own resignation, obtained a charter under the Great Seal, dated 21st May 1509, incorporating these estates in the Lennox and Menteith to be held in free barony, called the barony of "Edinballinaper."

About the same period the barony of Haldane, composed in like manner of the lands that had come to that family by Agnes Menteith, was erected in favour of Sir John Haldane (the grandson of Dernely's opponent) who by this time had succeeded his father James.

The Dernely branch of the earldom also obtained new charters of their possessions. "It appears (says Andrew Stewart) that Mathew Earl of Lennox, sensible of the distinction between the destination of the lordship of *Dernely*, received by grant from the Steward of Scotland, in the year 1361, and the destination of the lands composing the earldom of Lennox, and the title or peerage of Earl connected with those lands, obtained, on the 25th January in the same year, 1511-12, a separate charter from James IV. of the earldom of Levenax, lordship and lands thereof, and the office of

* Gleneagles Papers.

sheriff of the whole county of Dunbarton ; which premises are declared to have belonged, and to belong at the date of the said charter, to the said Mathew Earl of Lennox, heritably. But in this charter of the earldom of Levenax, the lands are not given, as in the charter of the lordship of Dernely, to Mathew Earl of Levenax, and *his heirs-male*, but to Mathew Stewart Earl of Levenax, and his *heirs-general*, (“ heredibus suis,”) which is repeated in several parts of the charter, without any indication of a limitation to heirs-male. This destination has probably been owing to the circumstance, that the ancient investitures of the earldom of Levenax had been in favour of heirs-general.” Unquestionably, as we shall see, it was owing to the fact, that the basis of Dernely’s assumption of the earldom was no special grant, but the charter of confirmation by King Robert III. to Earl Duncan in 1392, containing an ultimate substitution of the tailzied fief to the heirs-general of that Earl.

These honours brought no good fortune to the race of Earls who succeeded the usurper. That nobleman was the only one of them who died a natural death. Mathew, the second Earl, very soon after the above-mentioned renewal of his titles, died in harness. He remained firmly attached to James IV., and at Flodden commanded, with the Earl of Argyle, the right wing of the Scottish battle. There the daring but unlucky blood of Dernele and D’Aubigny once more stained a disastrous field; for alas,

Stanley broke Lennox and Argyle,
 Though there the western mountaineer
 Rushed with bare bosom on the spear,
 And flung the feeble targe aside,
 And with both hands the broadsword plied—
 ’Twas vain !

Lennox, and Sir Alexander Napier of Merchiston,* (who ought to have been Lennox,) with many another noble and knightly patriot, died on Flodden field. †

* Son of Archibald.

† Mathew Stewart was succeeded by his son John, third Earl of that race, who was killed during the minority of James V. in the skirmish near Linlithgow, which occurred 4th September 1526. The young King hurried to the spot, but was too late to save Lennox. He found Arran mourning over his body with these words: "The wisest man, the stoutest man, the hardest man, that Scotland ever knew is slain this day." His son and successor was Earl Mathew, the father of the ill-fated consort of Queen Mary. This earl survived his son, and was killed at Stirling on the 4th of September (the day and month fatal to his father) 1571, when the earldom merged in the crown of the infant James.

In the year 1572, new charters of the earldom were granted to Charles Stewart, the King's paternal uncle, and his heirs-male. He died in 1576, leaving only one daughter, the unfortunate Arabella Stewart. The earldom was then bestowed in 1578 upon Robert Stewart, (second son of John, third Earl of that race,) who very soon relinquished it in favour of his brother's son, the celebrated Esme, Lord of Aubigny, (who had been reared in France,) and Robert became Earl of March instead. Esme got the earldom of Lennox in 1579, and in 1581 it was erected into a dukedom in his favour. The honours again merged in the Crown when Charles, sixth Duke of Lennox and fourth Duke of Richmond, dying without issue, King Charles II. was served to him as nearest collateral heir-male. This monarch then bestowed the honours of Richmond and Lennox upon his natural son by a French lady, from whom the modern Dukes of Richmond and Lennox.

CHAPTER VIII.

THAT JOHN LORD DERNELY WAS NOT EARL OF LENNOX BY VIRTUE OF ANY SPECIAL GRANT FROM THE SOVEREIGN, OR NEW CONSTITUTION OF THE HONOURS IN HIS FAVOUR—HISTORIANS AND OTHER WRITERS REFUTED UPON THIS POINT.

No historian whatever has distinctly stated that John Lord Dernely was next heir of the earldom after the Duchess Isabella; and that he *succeeded* accordingly. But there is a very general, though vague and groundless impression, that he was specially gifted by his sovereign with the honours. This latter theory has sometimes proceeded upon the supposition that the Lennox was *forfeited* in the person of Earl Duncan, an idea already completely refuted. Others again have held the same doctrine of a new grant, who were perfectly aware that the idea of forfeiture is out of the question. Pinkerton says, "Lennox *received his title*, and the command of Dunbarton Castle from the young monarch," meaning thereby from James IV. in 1488. Duncan Stewart, and Andrew Stewart, the genealogical historians of the house of Stewart, both assert in positive terms, that Dernely was *created* Earl of Lennox by that monarch.* Peerage writers concur in the same idea, which Mr Hamilton also adopts in his laborious antiquarian compilation for Woodhead. The Quarterly Review

* "John Lord Dernely designed himself Earl of Lennox 1483, (1473) in right of his grandmother, daughter to Duncan Earl of Lennox; which title he gave up, and was afterwards *created* Earl

says, "We suspect there will turn out to have been some *renunciation and regrant* of the honours before the Darneleys assumed them."* And last, though not least, Mr Ridell, in his recent critique upon the Memoirs of Merchiston, observes, "There may possibly have been a *new constitution* of the dignity in the Stewarts of Derneley, although not yet discovered, which the House of Lords *might presume* under the circumstances of the case; but even admitting the fact, it might not compromise the descent of the *ancient earldom*."†

It is a remarkable and important fact, in reference to the question of Dernely's right, that Andrew Stewart, the genealogical historian of the house of Dernely, who most anxiously searched their private archives, having every facility for doing so, and who is particularly minute and accurate in his details of the progress of titles which successively established their feudal rights, has given a meager, incoherent, and erroneous account of the state of John Lord Dernely's titles to this his greatest acquisition. He offers this theory: "The reason of his being described Earl of Lennox in the Parliament held in the year 1475, has probably been this: John Lord Derneley, *apprehending himself entitled* to the peerage of Lennox, as well as to the principal part of the estate of Lennox, in consequence of his descent

of Lennox, by King James IV. ann. 1488."—*Duncan Stewart's Hist.* p. 153.

"Mathew Earl of Lennox succeeded to his father John within a few years after *the creation* of the earldom in his favour."—*Andrew Stewart's Hist.* p. 218.

"Lord Derneley either *usurped* this dignity, or, as seems more probable, *was created* Earl of Levenax."—*Case for Woodhead*, p. 71.

† No. civ. p. 445.—Review of the Memoirs of Merchiston, November 1834.

‡ Tracts Legal and Historical, p. 110.

from Elizabeth, the *second* daughter of Duncan Earl of Lennox, and in consequence of the *eldest daughter Margaret* having died in 1452 without leaving issue, had asserted his right to that peerage before the year 1475, and his claim had been *so far listened to*, that upon one occasion in that year he had been allowed to sit in Parliament as Earl of Lennox ; but, upon *better consideration*, he was not allowed to continue to make use of that title, and accordingly reverted to his designation of Lord Dernely, which he continued till the year 1488, in the time of King James IV. when, *either by creation or succession*, he became Earl of Lennox, which title afterwards continued to him and his successors.”*

This mixture of incoherence and error on the subject is very perplexing. If Dernely really took the honours of Lennox by right of succession, what is meant by his claim having been first admitted, and then “upon better consideration” disallowed? If, on the other hand, he took those honours in virtue of a special grant from the sovereign to himself, did that grant proceed upon Dernely’s mere “*apprehension* that he was entitled” to them,—the *right* of succession, however, being actually elsewhere? Again, the eldest daughter of Earl Duncan was not *Margaret*, but *Isabella* ; and if it be meant that Margaret was the elder of the two coheiresses who succeeded Isabella, this admission destroys the case for Dernely, it being unquestionable that Margaret is lineally represented, to this hour, by the representative of Menteith of Rusky. The paragraph quoted is sufficient to show how devoid the Dernely charter-chest, which has been well preserved, is of documents to instruct their right to the earldom of Lennox, since the historian who devoted himself to trace, through original

* P. 174.

deeds, all the titles of that family, is here completely at fault.

The facts I have already narrated, of which the dates shall be here shortly recapitulated, seem to set this question, of a special grant to Dernely, at rest.

1. When that nobleman first sat in Parliament as Earl of Lennox, it was clearly by virtue of *succession*, and not of special grant. He was *served heir* to Earl Duncan upon the 23d July 1473. Upon this service he obtained infeftment dated 27th July 1473. In this, however, he is still styled "John Lord Dernely." The infeftment being completed, and expressly including the chief messuage of the earldom, Lord Dernely is forthwith styled Earl. This is proved by the royal charter of the other lands he had resigned into the King's hands in security of Lord Avandale's liferent, which is dated 6th August 1473, and wherein he is for the first time styled "John Earl of Levinax." This manifestly was a mere recognition of the effect of his service and infeftment, for the lands here resigned were the Dernely and not the Lennox estates. After this he took his seat in the very next Parliament as Earl. The fact that he sat entirely upon his claim of succession is further proved by the effect of John Haldane's challenge of his service. The proceedings were instituted against him under the style and title of *Dernely*, because his service was not admitted. Haldane's technical pleas were brought to a successful issue on the 12th of January 1475-6. Of that date letters reducing Dernely's service pass the privy-seal, and there he is styled "John Lord Dernely." In the month immediately prior to that judgment a royal commission had been granted to him, in which he is still styled "Johanni Comiti de Levenax." But on the 1st July 1476, six months after the decree of reduction, a

Dernely, "It appears that, in the first Parliament of James IV., in the year 1488, John Earl of Lennox was present on the second day of its sitting; and that Lord Lyle was then Justice-General; that Parliament, it is believed, was not attended by those who had supported the cause of the deceased sovereign James III.; it was attended by those who had espoused the cause of the Prince and of the confederate lords. Besides these proofs of his connection with the Prince's party, there were several instances of favour shown to Lennox and his son Mathew in the early part of the reign of James IV.; from all which, it must be confessed, there is too much reason to conclude that John Lord Dernely, Earl of Lennox, was in confidence with the party that deposed James III.; and *availed himself of the circumstances of the times to establish his title* to the earldom of Lennox, which had been withheld from him since the death of Isabel Countess of Lennox."*

But who, it may be asked, had *withheld* the earldom of Lennox from John Lord Dernely? or *how* had he so suddenly, in the course of a few months of civil commotions and war—"circumstances of the times" most unfavourable for a deliberate and legal assertion of right—*established his title* to that earldom? Most unquestionably he had resumed the honours upon this occasion without having taken any legal steps whatever, as is sufficiently proved by the dates of the transactions we have reviewed; and he now sat as Earl of Lennox, without having renewed the titles that had been reduced. "The patent or charter," says his historian, "creating John Stuart Lord Dernely, Earl of Lennox, *has not been discovered*, therefore nothing positive can be asserted with regard to the terms of it, or the destination of that

* Andrew Stewart, p. 190.

title :”* but, he adds, “ it is clear that the question about the peerage of Lennox must have been settled and *acknowledged* before the year 1490.” There is, however, a process to which I shall now call attention, the tenor of which not only contradicts this assumption, but appears to me to place beyond question the fact, that Dernely never obtained “ a *new constitution* of the dignity,” † and that there never was any “ *renunciation and regrant* of the honours before the Darnelys assumed them.” ‡

John Haldane’s last attack upon the service, and subsequent steps accomplished by Dernely to the prejudice of his letters of protection, during his absence abroad, has already been noticed. It is remarkable that the date of this summons of reduction has hitherto, in all modern considerations of the matter, been entirely misapprehended. In Lord Loughborough’s case for Gleneagles, it is particularly noticed and founded upon as of date 1475, and as if part of the original proceedings against Dernely in that year. Various transcripts of the same deed, which I have seen among the Gleneagles papers, have also assigned this erroneous date, 6th February 1475. The original, however, leads to a very different conclusion. It is a summons of reduction under the great seal obviously of James IV., for it is dated 6th February and *fifth year of our reign*. Now 1475 is in the reign of James III., but certainly not the fifth year of that reign. The deed refers to Haldane’s embassy, in 1473, as having occurred in the previous reign ; the date of the deed, therefore, must be the fifth year of the reign of James IV. Haldane’s lady, Agnes Menteith, was certainly alive in the year 1477 ; but this deed mentions her as being now dead. James Shaw of Sauchie, Sheriff of Stirling, is also therein named as dead ; and it is well known that

* P. 187.

† Mr. Riddell.

‡ Quarterly Review.

he did not die until the year 1479, having been killed in May of that year at the siege of Dunbar Castle, by the same cannon shot that cut off Sir John Colquhoun of Luss and Sir Adam Wallace of Craigie. Unquestionably the date of this summons of reduction is 6th February 1492, being the fifth year of the reign of James IV.*

Let us now attend to the tenor of this summons. It is raised by John Haldane in his own name and in that of his son James, against the *very service* which had been cassed and annulled by letters under the privy-seal of James III. in 1475. But it is of a more comprehensive nature, including a claim of damages against the inquest who sat upon that service, and proceeding, however, upon the very pleas of irregularity and partiality which Haldane had formerly used with success. It is raised not against the *Earl of Lennox* but against *John Lord Dernely*, who is specially summoned under that minor title. The case is called in court upon the 15th June 1492 ; but it is noted on the process that, of that date, " The present cause between *Lord Dernely* and his son, and the laird of Gleneagles and his son, is continued of consent of parties to the 8th of October following." The link afforded by the accurate date of this process completes the history of the settlement of the fief, *per fas aut nefas*, in the person of John Lord Dernely ; for it will be observed that it was in the intermediate July, between the calling of this cause,

* "*Datum sub testimonio magni sigilli nostri apud Edinburgh, sexto die mensis Februarii anno regni nostro quinto.*" On the back are indorsed the executions. It is served upon Dernely under that minor title, and not as Earl of Lennox. Below is written ; " xv. Junii, presens causa inter Dominum Dernely et suum filium, et Dominum de Gleneagles et suum filium, de eorum consensu continuatur ad viii. Octobris proximo futuri," &c. But the contract of excambion dated in the interval settled the matter.

and the date to which it was postponed, that Mathew Stewart is commissioned by his father to go to the kirk of Drymen, and drive a bargain with their pertinacious opponent Haldane. In that same month of July, accordingly, Haldane signs the indenture, which forms a perfect *pendant* to that agreed to by Elizabeth Menteith and Archibald Napier in the year 1490.

This, then, sets at rest the question of a new creation of the earldom in favour of Dernely in 1488, or indeed at any other period. Had such creation ever occurred, Haldane would have raised a bar *in limine* of his own pursuit; for, upon the hypothesis of this special grant, Dernely would not have been bound to answer to a summons which did not cite him competently, under the style and title which was his right. It also proves, that when Dernely resigned the Lennox into the King's hands in the year 1490, for a new charter to himself and his son in fee and liferent, he had done so most irregularly and ineptly, for there was nothing feudally in his person to resign. The process of 1492 is directed solely against the service and infeftment of 1475 and its abettors, because upon *that basis alone* Dernely had resumed the honours. Had any supervening service or titles existed in the person of Lord Dernely, Haldane must have attacked those, or at all events would not have been so absurd as to attack titles made up in 1475, but which had not only been reduced, but superseded by subsequent ones. Andrew Stewart (who was not aware of this process in 1492) expressly states the service of 1473 as the basis of all the Dernely titles to the Lennox; and never discovered any other among the carefully preserved papers of that family; but he does not record that that service, and all that followed upon it was entirely swept off by reduction in 1475.

CHAPTER IX.

REPLY TO LORD LOUGHBOROUGH'S MEMORIAL FOR GLENEAGLES.—STATE OF THE PROCESS BETWEEN DERNELY AND GLENEAGLES.

A genealogical Case, already alluded to in the progress of this investigation, was printed some time in last century, and entitled "Memorial relative to the succession to the ancient Earls of Levenax." * This compilation, now only known to legal antiquaries, appears to have been intended to aid a contemplated claim in Parliament, on the part of the heir of line of Haldane of Gleneagles, to the earldom of Lennox. The whole argument for Gleneagles is drawn from the proceedings already summarily noticed, by which John Haldane, chiefly in his own name, but also in that of his spouse Agnes Menteith, and their son and heir James Haldane, threw certain obstacles in the way of Lord Dernely's usurpation ; and the inference, implied rather than stated, is, that of necessity this opposition was in consequence of the primogeniture of Agnes Menteith in her father's family, no less than of the primogeniture of her grandmother, the Lady Margaret of Lennox, among the daughters of Earl Duncan. The case depends entirely upon a plausible assumption, comprehended in the following sentences of the memorial, in which, it will be observed, the primogeniture of Agnes Menteith is as-

* See Preface.

sumed as an undoubted fact, and not a shadow of evidence directed to that important point of the case.

“ Agnes Menteith, married to Sir John Haldane, was without dispute the eldest daughter of Sir Murdac Monteith ; and if Margaret her grandmother was truly the second daughter of Earl Duncan, then the said Agnes, being the great-grandchild and eldest heir-portioner of Earl Duncan, after the failure of the Duchess of Albany and her issue, had undoubtedly a just and full right to the dignity, and to the superiorities, &c. And her husband was entitled to the same in her right. That at first this matter was not called in question, and that the right of Agnes and her husband was *fully understood and publicly acknowledged*, can be clearly shown ; for, soon after the death of the Duchess of Albany, Sir John Haldane obtained from King James III. a charter of the fourth part of the property of the earldom, and of *the whole superiority* thereof, to be held of the King, with all the pertinents and privileges consequent thereon ; and this charter is expressly granted to him “ *tanquam primo et principali dicti comitatus*,” and upon this charter he was publicly infeoffed in April 1473. This charter, flowing directly from the King, the fountain of honour, may be considered either as an *explicit acknowledgment* of his right by the highest authority, or as an *express grant* of the superiority and dignity necessarily following from his being designed the first and principal person of the earldom ; and in either view *certainly vested in Sir John* a right which never was or could be recalled, and of course descended to his heirs.”* This is a bold plea, and with some readers might pass for unanswerable. Let us examine, however, a little more closely, the foundations upon which it rests.

* Memorial, p. 2.

John Haldane of Gleneagles, married about the year 1460* to Agnes Menteith, was at that time the heir of an ancient and wealthy family. His father was Sir Bernard Haldane of Gleneagles, and his mother a daughter of William Lord Seaton. In 1473, as already observed, John Haldane was sent upon a mission to the King of Denmark, the father-in-law of James III. Before taking his departure, however, he obtained, under circumstances already narrated, the charter pleaded upon in the memorial. It is dated 28th March 1473 (the fourth day of the new year), and bears that the King, "For gratuitous and faithful services bestowed and to be bestowed upon us by our beloved household squire John Haldane of Rusky," grants the said John a fourth part of the whole and entire earldom of Levenax, "as first and principal of the same." These expressions are repeated in the charter, which is a complete grant to Haldane of the property and superiority of a fourth part of the Comitatus, with all the pertinents and privileges appertaining to "the said fourth part of the Comitatus, as principal of the same." There is no mention whatever of Haldane's *spouse* or her claims upon the Lennox; and the grand qualification of the grant is the reservation, formerly mentioned, to the Chancellor Avandale of the entire possession of the Comitatus during his life, as enjoyed by the Earls of Lennox.†

* Memorial, p. 2.

† *Jacobus, &c. Sciatis nos pro gratuitis et fidelibus servitiis per dilectum familiarem armiger nostrum Johannem Haldane de Rusky nobis hactenus impensis et impendendis, dedisse, &c. dicto Johanni quartam partem totius et integri Comitatus de Levenax cum pertinentibus tanquam primo et principali ejusdem, jacens, &c. Tenend. et habend. totam et integram quartam partem prefati Comitatus de Levenax cum pertinentibus, dicto Johanni tanquam primo et principali dicti Comitatus, et heredibus suis, de nobis, &c. cum tenentibus, tenan-*

It must be admitted by every one conversant with such historical and legal antiquities, that this charter is totally inadequate to sustain the peremptory argument quoted from the memorial. It can never be viewed as an “*explicit* acknowledgment” on the part of the Crown, of Haldane’s right to the earldom by the law of courtesy, since the name of his lady is not mentioned in the charter, nor her rights alluded to. Such explicit acknowledgment would rather have appeared in the shape of a charter granted conjunctly to Agnes Menteith and her spouse. Neither can it be regarded as an “express grant” to Haldane (an alternative view, by the way, indicating that the charter is any thing but *explicit*,) of the dignity of Lennox, seeing that that gentleman immediately feudalized his right under that charter by taking infeftment upon it,* and yet went abroad upon a royal mission, as *plain John Haldane*, for as yet he was not even honoured with knighthood. Now, if his right to be Earl of Lennox was, as the memorial says, “fully understood, and publicly acknowledged,”—if, as argued, he possessed this right either by courtesy from

driis, &c. &c. ad dictam quartam partem Comitatus ut principali ejusdem pertinentibus, &c. Reservato et salvo libero tenemento totius dicte quarte partis dicti Comitatus cum omnibus suis pertinentibus, &c. dilecto consanguineo et Cancellario nostro Andrea Domini Avandale, pro toto tempore vite sue, &c. Faciendo inde annuatim dictus Johannes Haldane et heredes sui, nobis, heredibus et successoribus nostris, jura et servitia de dicta quarta parte dicti Comitatus debita et consueta, &c. Apud, Edinburgh 28 die mensis Martii 1473.—Mag. Sig. vii. 229.

* Upon this charter Haldane took infeftment 2d April 1473. The precept of seisin bears “*dedimus et concessimus hereditarie dicto Johanni quartam partem totius et integri Comitatus de Levenax cum pertinentibus tanquam primo et principali ejusdem, &c. &c. salvo libere tenemento dicte quarte partis, &c.*” to the Chancellor.

the *undoubted* right of his lady, or, otherwise, by an "express grant flowing directly from the fountain of honour," why, then, after he had completely satisfied the *territorial* principle also by taking infeftment upon his rights, did he proceed on a royal mission to the court of the King's father-in-law as *plain John Haldane*?

The terms, upon which so much stress is laid, of "first and principal," are by no means of a nature to surmount this difficulty. They are not known as expressions to indicate the conveyance of a territorial dignity, and in this charter their application is ambiguous and undefined. Sometimes the phrase is "*tanquam primo et principali dicti Comitatus*," as if the principal superiorities of the whole fief were pointed at. But in other clauses the expressions appear to be limited to the quarter which is the subject of the grant, "*ad dictam quartam partem Comitatus ut principali ejusdem pertinentibus*." This too will be observed, that although the chancellor's life-rent grant included entire and unrestricted possession of all the lands and liberties of the fief, as fully and freely as formerly enjoyed by the Earls of Lennox, Haldane is only required to guarantee that possession to the extent of a fourth part; and the feudal services which Haldane himself is taken bound to fulfil are only *de dicta quarta parte*.

While, on the one hand, the gloss attempted to be put upon the words in question is totally irreconcilable with the fact that Haldane *did not assume the honours* at a time when, *ex hypothesi*, circumstances were most favourable for his doing so,—on the other hand, there is a simple interpretation of the expressions, which it is impossible to read the charter without perceiving. The party who ruled such matters in Scotland at the period, was

the Chancellor Avandale, and he was at the very moment securing to himself this liferent possession of the whole earldom of Lennox. The charter to Haldane was the first that had any connection with the succession of the coheirs of Earl Duncan. It was granted under express reservation of the chancellor's liferent, which created a temporary exclusion of the legal succession. Is it at all unlikely, considering the nature of the transactions, and the state of the times, that Haldane took this special grant to himself, of a prospective possession of a quarter of the fief, as the best bargain he could make both for himself and his wife, and that the phrase "*tanquam primo et principali*," (so unprecedented when regarded as a special conveyance of honours) meant neither more nor less than Haldane's prospective right of *plenum dominium* in a quarter of the Comitatus, standing in contradistinction to the chancellor's liferent possession which burdened the grant? -

But we are not left to such rational inferences from the terms of the charter itself, in reply to the bold pleading instituted for Gleneagles. It can be positively instructed, by a decree of the Lords of Privy-Council, that Haldane did not receive that charter in consequence of his or his lady's right to the dignity of the earldom being "fully understood and publicly acknowledged."

That gentleman returned from his embassy, and obtained a reduction of Dernely's service, in the year 1475, as already narrated. The terms of this decree of reduction are well worthy of observation, because they afford the most authentic and impartial statement of the precise footing upon which Haldane obtained his charter. I shall therefore quote *verbatim* so much of it as touches the case.

“James,” &c. “That for als meikill as we send oure *lovet familiare squyre* Johnne of Haldane, *of the Levinax principale*, and of Rusky, as ane of oure ambassiadouris, for certane matteris concerning us in neirness, to oure deirest faeder-in-law the King of Denmark, for the quhilk we tuk the said Johnne, his lands, rents, &c. togidder with all his actions, causis, and querelis, movit or to be movit quhatsumevir, under oure speciale respect, protection, saufiguard and defens, induring the tyme of his being utenth oure realme in oure said materis, and for forti dais efter his hame cumming, as is contained in our said respect. Nevirtheless in his absence, and furth being of oure realme in oure service foresaid, *Johnne Lord Dernely* optenit and purchest brevis of oure chappell tuiching the superiorite of the Erel dome of the Levinax, the quhilk the said Johnne Lord Dernly nevir clamit nor persewit als long as the said Johnne of Haldane was present, and for this he offerit divers times to the said Johnne of Haldane contentatiouns before the Lords of oure Counsale as for the principal superioritie of the said erledome, as the said *Johnne of Haldane alleges*; be the quhilk brevis the said Lord Dernely has optenit interest in the said superiorite, in great prejudice, hurt, and skaith of the said Johnne of Haldane, that evir clamit the said superiorite be resone of his spouss, and obtenit oure favours tharto as principale, be our charter and seising givin to him thereupon *because the said Lord Dernly na nane utheris oure lieges maid ony clame contrar the said Johnne of Haldane, nor his spouss, tuiching the superiorite foresaid, we herd na party contrair to him in that matter befor the time of his passage utenth oure realme* in our service, as said is, and now of lait sen the hame-cumming of the said Johnne of Haldane he has menit him to us, *that our said respect was*

hurt and broken to him in its said superiorite. For the quhilke we causit the Lords of our Counsale, togidder with uthir baronis of our realme, to syt and aviss tharupon, the quhilks fand that our respect wes hurt and nocht kepit to the said Johnne of Haldane be the brevis purchest be the said John Lord Dernly anent the superioritie of the said erledome ; therefore we have considerit the possessione and sesing given to the said John of Haldane as principale, and the rycht of the successione perteing to the said Johnis spouss, *undemandit be ony of our lieges*, togidder with ye cause above proponit ; our will is, that the said brevis, sesingis, interest, and all uthir thingis following tharupon, purchest and openit be the said Johnne Lord Dernly anent the said superioritie, sen the tyme of the passage of the said Johnne of Haldane in our service utenth our realme, as said is, be of *nane availe, strength, force, nor effect, before ony juge or jugeis, spirituale or temporale, in time cumming*, and that thai *be annullit for ever*, sua that the said matter sall stand in the samyn forme, force, and effect as it was the day of the passage of the said Johnne of Haldane utenth our realme in our service forsaid, *but prejudice to ony party in their rychtis in time to cum.* Gevin undir our Privy-seile at Edinburgh, the 12th day of Januare and of our regime the 16th yere.—(Signed) Scheves.”*

This is an important document in the Lennox case. It proves by a declaration issuing from the fountain of honour,

1. That Dernely had sat in Parliament among the *Comites* solely in virtue of his service to Earl Duncan, as he is here only styled, “Johnne Lord Dernely.”

* Gleneagles Papers.

2. That there was no public acknowledgment of Haldane's right, by courtesy, to the earldom of Lennox, and no express grant to that effect in his charter "*tanquam primo et principali*," either meant by the sovereign, or understood by Haldane, for he is simply styled our "familiar (*i. e.* household) squyre," although he was *infest* upon the charters said to convey the honours, and although the decree was founded upon that very charter.

3. That any claim which Haldane had put forth in name of his spouse to the superiority of the earldom was not admitted as a matter of acknowledged right, but simply in absence, no other party having appeared or been heard in the matter before he departed on his embassy.

4. That whatever subsidiary plea Haldane may have urged in right of his lady, his leading plea, and that too upon which the judgment mainly proceeded, was, that the royal letters of protection from all suits, &c. had been broken in the person of Haldane by Dernely's service to a special portion of the fief, a process to which Haldane, who was *infest* in a portion, ought to have been called.

5. That the decree of reduction involves no declarator either of Haldane's or his lady's right to the dignity, but, on the contrary, expressly reserves the rights of all parties having claims; and places that matter precisely in *statu quo*, as it stood when Haldane departed on his embassy as *plain John Haldane*.

Thus the whole argument in the memorial reared upon the terms of Haldane's charter, which is the main pillar of the modern case for Gleneagles, falls to the ground. That Agnes Menteith was elder than her sister Elizabeth is assumed in the memorial, and simply from the circumstance (also assumed) that Napier did

not oppose Dernely, while Haldane did. Now it is known to every reader of history that the minority of James III., during which the proceedings relied upon were instituted, was a period of all others when various causes might have kept back the pretensions of an elder sister, even while a younger one attempted to protect her postponed rights. The characteristic of those times was *usurpation*. James II. or his ministers, usurped the earldom of Mår. Archibald Douglas usurped the earldom of Moray, to the prejudice of the *elder sister of his wife*. The Duke of Albany assumed the title of King of Scotland, to the prejudice of his elder brother James III. on the throne. In times of political confusion, and of many a lawless pretension, the inference is much too hasty that would attempt to deduce the paramount right of one party from the forwardness and activity of his claim, or the absence of all right in another from the silence of his pretensions.

The above considerations, it is apprehended, would of themselves be sufficient to destroy the case for Gleneagles before any competent tribunal; but, it must be conceded, without at the same time establishing any case for the representatives of Elizabeth Menteith. For they merely go to prove, that the memorial does not make out the case, and that its inferences are not sound.

The first view of the matter which rears a plea for Elizabeth Menteith is this,—that not only is it unsound to argue from Haldane's charter and subsequent process, that his spouse was the elder coheiress of *Rusky*, but a contrary inference may be gathered from that procedure,—in which case the claim for her sister Elizabeth would be *negatively* established.

We have seen that there were certain obvious grounds

of law, totally independent of any claim to the honours, upon which Haldane, who notoriously had a better right to them than *Dernely* had, could attack that nobleman's usurpations. To meet these substantial technical pleas, *Dernely* required at once to instruct the most exalted right in the Comitatus ; and hence, in all his contention with Haldane, he endeavoured, both publicly and privately, to obtain either the verdict of a jury, or a decree-arbitral to this effect, that he *Dernely* represented the eldest daughter (after Isabella) of Earl Duncan. Haldane's pleas were indeed equally substantial in law to reduce all processes instituted in his absence, wherein he ought to have been called, even if *Dernely* had been well founded in his pretension. But that nobleman's *absolute right* would have been too powerful to contend with, could he have met Haldane's technical plea with the fact, that he was *de jure* Earl of Lennox. *Dernely*, however, could not take ground so high ; for Haldane was prepared to urge, as a *subsidiary plea* on the part of his own spouse, that she, and not Lord *Dernely*, was "come of" the elder coheiress of Lennox,—that by inheritance her interest in the honours was certainly prior to his, who could not, therefore, urge his *unquestionable right* as an excuse for his irregular service. This is precisely the mode of pleading which a party in John Haldane's situation,—having a good technical plea, and a charter whose ambiguous terms gave him an interest in the Comitatus not very clearly defined, and with a usurper for his competitor,—would be likely to adopt, supposing his lady to have been the *younger* of two coheiresses, both having a prior right to this opponent. Now it happens that the reasons of reduction which Haldane urged, chiefly in his own name, but also in that of Agnes Menteith, are yet extant among the

Gleneagles papers, and they fully instruct that such was his line of argument.* His *leading plea* is the infrac-

* “ My Lords, thir ar the resonis that I, John of Haldane of Glenegass, and James Haldane, my son and apperand air, allegis for us ; That the personis that past upon the serving of the brieve purchest be Johonne Lord Dernely of the half Erledome of the Levenax, as the said John had cummyng of the eldest sister, that thai have ariit (erred,) wranguisly decernit, and unorderly and partially deliverit in the serving of the said brieve.

“ *Item, in primis*, It was not unknowing to the saidis personis that I, Johne of Haldane, was infesthit be charter and sayings of the quarter of the Erledom of the Levenax, the superioritie of the said erledome, with tenand and tenandry, with donacioun and presentatioun of chapellys and kirks, likas the saide feftment sufficientlie purportis ; the quhilk inquest has not differit thairto, ’ &c.

“ *Item*, My Lordis, in the time of the serving of the saide breve, I was in my Sovrane Lordis speciall service,” &c.

“ *Item*, My Lordis, I, Agnes of Menteth, spouse to the said Johne, allegis for me, that suppose my husband had not been infest be our Sovrane Lordis Hienes of the superioritie of the said erledome, that thai have erriit and partially deliverit, that said, that the saide Johne *come of the eldest* dochtir of Erle Duncan, suppose that had been a poynt of the breve, as it was nane ; for it is weill knowing to your Lordschippis and to the maist part of the realme, *that I come of the eldest sister*, and the said Johne of the youngest, and to that nedis nane uthir pref, for the law sais, *cum notorium est non incumbit probari*.”

“ *Item*, My Lordis, it is weill knowing to your Lordschippis, that the said Johne Lord Dernely has divers tymes preferrit to me and my husband, for the superiorite of the said erledome, before the serving of the said breve, and be part of them that was upon it, contentatioun of landis and money for the said superiorite of the erledome.” The reasons then go on to complain that the jury was packed of Dernely’s friends, relations, and dependents, and that the sheriff had not done his duty in terms of law.—*Gleneagles Papers*.

There is no plea in these reasons which absolutely asserts that Agnes Menteith was the elder daughter of Sir Murdoch ; and notwithstanding Haldane’s sweeping claims to the superiorities, Elizabeth Menteith sold her right and interest in the same to Dernely.

tion of the royal letters of protection. His *leading proof*, with regard to his interest and rights in the Comitatus, is his own spécial charter *tanquam primo et principali*. His utmost demand is certain superiorities which he argued those expressions inferred a grant of. Then as a *secondary plea*, to meet and neutralize Dernely's unblushing pretension of primogeniture, Agnes Menteith is made to urge,—not expressly that she was *Countess of Lennox*, as *representing* Earl Duncan's eldest coheiress,—but, more vaguely, that, independently of Haldane's interest on his own charter, the jury who served Lord Dernely had *erred* in saying he was *come of* the elder daughter of Earl Duncan, it being *notorious* that Haldane's spouse was *come of* the elder daughter.

But had that gentleman been married to the eldest coheiress *of Rusky*, then, since he determined to compete with the powerful Dernely, and to put forth his wife's pretensions at all, his mode of pleading would have been reversed. His *leading plea* would have been the right of his lady to the earldom. His *subsidiary plea* would have been upon his own right of courtesy, and upon his own charter as an acknowledgment of that right.

As for the *contentations*, which, it is said, Dernely offered at various times to Haldane, and the stress laid in the memorial upon the *contract of excambion* which silenced his opposition, that plea is neutralised by the fact, that Elizabeth Menteith in like manner received a compensation for all her rights of superiority in the fief, in that contract of excambion from which the very same inferential argument can be extracted in her fa-

The fact is, as will be proved in a subsequent chapter, that Haldane was inclined upon every occasion to treat the rights of his wife's sister as if no such person existed.

vour that is said to arise to Gleneagles from Dernely's contract with Haldane.

It is remarkable that, after the reduction of his service and infeftment in 1475, Dernely never attempted to renew it. He never afterwards submitted his plea of consanguinity in the usual form to an inquest, nor did he take out any *pleadable* brief to get the better of that counter plea of possession of the superiorities which Haldane urged against him. He endeavoured to obtain a settlement of the matter by a private submission to certain noblemen, most of whom were his own particular friends, and the question to be submitted to them was, " anent the debatis of the superiorite of the Erledome of Levenax, which debatis dependis upon the ages of umquhile Elizabeth and Margaret, the dochteris lauchful of umquhile Duncan Earl of Levenax ; that is to say, whether the said Elizabeth, grandame to the said Johne Lord Dernely, or Margaret, grandam to the said Agnes, was elder and first borne of their modir." A submission to this effect was entered into between Dernely and Gleneagles, without any mention of the correlative rights of Merchiston, on the 21st June 1477. This was continued of consent of parties to the 21st of January following, and again continued to the 15th of February.* This submission fell to the ground without any decision or result. Another private arrangement to the same effect between Dernely and Gleneagles was equally inconsequential, though an award of a very extraordinary nature is said to have been pronounced upon it in 1491, as will be more particularly noticed in considering Dernely's claim of primogeniture. The whole result, however, of this contention, was the contract of excambion

* Gleneagles Papers.

in 1493, by which the Gleneagles branch of the succession just ranks in the settlement *pari passu* with Merchiston.

It is an entire mistake, then, to suppose that the state of the process we have considered *establishes* the fact of the primogeniture of Agnes Menteith over Elizabeth. On the contrary, the details of it rather afford an inference that Haldane was unable to take ground so high.

CHAPTER X.

THAT JOHN LORD DERNELY HAD NO OTHER RIGHT TO THE HONOURS OF LENNOX THAN WHAT HE OBTAINED THROUGH THE CONTRACTS OF EXCAMBION—LEGAL EFFECT OF THOSE CONTRACTS.

THERE was nothing, even in the state of the times, to defeat Lord Dernely's assumption of the dignity of Lennox,—inheriting as he did a double portion of the fief, and being already a peer of Parliament,—had he really been the representative of Earl Duncan's second daughter. The law, on the subject of female succession to titles of honour, was well understood, and, however apt to be disregarded by the powerful to the prejudice of a weaker party, where *might* and *right* were combined no one could pretend to dispute it. Nor was it indifference on the part of Dernely that delayed his aggrandizement. He thirsted for the Earldom of Lennox, and left no means untried to acquire it. Yet, after his service was exposed and destroyed by the technical pleas of a private party, who made no attempt to assume the title, Dernely suffered it to remain in abeyance for thirteen years. Had he not been conscious of an inferior right, he would have obtained new brevies,—he would have disregarded John Haldane's charter of a quarter of the fief, though granted to him *tanquam primo et principali*,—he would have dared him to a competition with the rightful and powerful heir of the dignity,—and he would have asserted, and proved in the face of his

country and his peers, his right to sit in Parliament as Earl of Lennox.

The difficulty of proving whether Margaret or Elizabeth of Lennox was the elder of Earl Duncan's daughters, can never be urged as explanatory of this abeyance of the title. The fact was of course a matter of notoriety. To adopt the words which Agnes Menteith is made to urge as a subsidiary plea against Dernely's service, "They have erred and partially delivered, that said that the said John (Lord Dernely) come of the eldest daughter of Earl Duncan, for it is *well known to your Lordships*, and to the *most part of the realm*, that I come of the eldest sister, and the said John of the youngest, and that needs no other proof, for the law says *cum notorium est non incumbit probari*." The question was the relative ages of the respective *grandmothers* of the parties,—coheiresses of the Lennox,—ladies whose patrimonial rights were too important and extensive to have left that question of primogeniture doubtful, far less inextricable. Besides, Dernely himself was married in 1438, certainly more than twenty years before the death of the Duchess Isabella ; his father Sir Alan was killed in 1439 ; thus for many years, the old Countess of Lennox must have regarded Dernely as the heir of the earldom, had he been the son and heir of her next oldest sister. If such had been his status, it could not have failed to be matter of notoriety to the whole realm, considering how distinguished, warlike, and aspiring that race of Stewart had become.

In the memorial for Gleneagles a document is quoted, as being among the family papers, which of itself would be sufficient to prove that Dernely was not by right of primogeniture Earl of Lennox. Not having seen the

original, I shall quote the reference to it in the words of Lord Loughborough.

“ There is likewise *produced*, a copy of the decision, given by Lord Lyle and Lord Oliphant, in 1491, upon the subject ; the determination of which the parties had finally submitted to them, with six other noblemen and gentlemen mutually named, who were joined with them as counsellors and amicable compositors. This deed is dated at Stirling in September 1491,—sets forth the names of the parties, and their claims, and the names of the arbiters, and that they had fully agreed and concorded, that the said Sir John, and James Haldane, between and the 10th of October then next, should give up to Lord Darnly their quarter of the property of the said earldom, excepting the particular lands therein named ; so that Lord Darnly would have right to three quarters of the earldom ; excepting what they thus reserved to themselves, and on the other hand, that Lord Darnly should, between and the said 10th of October next, resign and give up to the said James Haldane, *all the right of the superiority and tenantry of the said earldom*. The deed is subscribed by the arbiters and their counsel, and the parties, who, it is therein said, had, of their own free will agreed thereto, and sworn faithfully to observe and keep the same.”

This was a most extraordinary decision, when all the proceedings and pleas of parties are considered. It is dated more than a twelvemonth after Lord Dernely had purchased from Elizabeth Menteth all her right to the superiorities and freedoms of the earldom ; and about eighteen months before Haldane raised his last summons of reduction and damages against Dernely's service and its abettors ; and about two years before he gave up all his rights of superiority in the Lennox to that

nobleman, precisely as Elizabeth Menteth had done. Assuming the accuracy of the Gleneagles memorial, it certainly affords a powerful argument that Lord Dernely was not by right of blood Earl of Lennox. Lords Lyle and Oliphant were his particular friends. Lyle had even been his companion in the revolt for which Dernely incurred a temporary forfeiture in 1488. At the very period when this decree arbitral is said to have been given Dernely sat in Parliament as Earl of Lennox. If also *de jure* Earl, is it conceivable, that, after all the uneasiness which he had suffered in his possession of the honours—after the vexations litigiousness of John Haldane, kept up for about twenty years—after his own recent forfeiture and restoration, and having the fief now open to him, and unburdened by Lord Avandale's liferent,—his most intimate friends, the matter being in their own hands, would, instead of clearing his just right to the earldom, and silencing opposition for ever, have pronounced a decision which only rendered confusion worse confounded. Perhaps the real spirit of the decree-arbitral was, that Lord Dernely should *use his own discretion* as to the assumption of the title of Earl of Lennox,—that Haldane should deliver up to Dernely his, Haldane's, quarter of the Comitatus, with the reservation of so much land as might suffice for the estate of a private gentleman, but that Haldane was to have "*all the right of the superiority and tenandry of the said earldom,*" if, under such circumstances, *he could make the grant available.*

Had Lord Dernely been heir of the dignity which the old Countess kept up in her own person with punctilious ceremony, he must have been frequently consulted upon such feudal occasions, and could have produced evidence of the fact. Suppose that at this moment a charter of

Duchess Isabella were produced, whose preamble bore the *consent and assent* of John Stewart of Dernely, or of Sir Alan his father, or of Elizabeth of Levenax his grandmother, then, notwithstanding the strong evidence of usurpation already displayed, it would be hopeless in the face of such a charter to contend for the right of any other branch than that of Dernely to the earldom of Lennox. Taking such consent of a third party to a feudal grant is so certain an indication of that individual being acknowledged to have the *next interest* in the particular fief, as not to be susceptible of any other explanation. If a single proof were extant that Isabella of Levenax, ever in this manner acknowledged her sister *Elizabeth* as standing next to herself in the highest rights and interests of the Comitatus, then, though the whole conduct of John Lord Dernely would be totally inexplicable, yet his pretensions would scarcely be redargued by any thing that has been stated. There is, however, not one example of the kind to be found in his favour, though he was a married man in 1438, more than twenty years before the old Countess died.

If, on the other hand, it can be shown, that Isabella in any of her charters, took the consent of her sister *Margaret*, and not *Elizabeth*, we apprehend that this independent piece of evidence—of a nature successfully to have met all the proofs already alluded to against Dernely, had the plea of that nobleman been so supported—must have an irresistible effect when corroborative of all that has been stated against it. Now such an original charter has been already referred to, and sets at rest this branch of our inquiry.

It is that charter of mortification of the lands of Balagane in the Lennox, granted by the Duchess Isabella to the Predicant friars of Glasgow for the repose of the

souls of her kindred. It was most necessary in a grant of mortification, that the consent of the next heir should be taken, for the church was exempt from feudal dues and services.* Accordingly the charter in question runs in the name of the Duchess, but “*cum consensu et assensu dilectissime sororis nostre germane MARGARETE uxoris quondam Domini de Rusky, dedisse et caritatis intuitu concessisse,*” &c. and it concludes, “*In cujus rei testimonium sigillum nostrum una cum sigillo dilectissime sororis nostre supra dicte presentibus sunt appensa,*” &c.†

It is difficult to conjecture a reply to the evidence of primogeniture which this consent affords. No one acquainted with the feudal customs will say that Margaret and Elizabeth, being to succeed as *coparceners* after the death of Isabella, and having an equal interest in the fief, it was immaterial which of their consents was obtained. The great object of taking the consent of the next heir, as is well known to every feudist, was, that the next successor to the command of the fief might not be compromised in his feudal interests and dignity. It was not a mere pecuniary consideration in reference to the *dominium utile* of those coming after the granter,—(in which view *both* Margaret and Elizabeth should have adhibited consent, instead of *either* being sufficient) it was a feudal practice, having reference to the *head of the house*, and the power and dignity of the fief. There are instances where the consent of more than one person

* “In lands mortified in times of Popery to the church, whether granted to prelates for the behoof of the church, or in *puram eleemosynam*, the only services prestable by the vassal were prayers, and singing of masses for the souls of the deceased, which approaches nearer to blanch-holding than ward.”—*Erskine*.

† See *supra*, pp. 18, 19.

is taken, as in that charter where Earl Duncan takes the consent of his daughter Isabella, and her husband, and *their* son and heir, Walter Stewart.* But these were all as heads of the house, and heirs of its highest privileges.

That heirs-female, succeeding to a barony or Comitatus, divided the lands, while the eldest succeeded to all the honours, including the *caput baroniæ*, as impartible rights, is indisputable law.† Her right to be consulted and to adhibit her consent to a deed of mortification, where such grant was contemplated by the lord in possession, was precisely of the same *impartible* nature as the right to possess the chief messuage; and where a barony was to descend to coheiresses *a fortiori* the consent of the eldest to such a grant would be required, for she could less afford to have her fief diminished in its feudal dues and services, as it was to be lightened in her person of half the lands.

There is no disguising the fact, that the coheiresses of Rusky and their heirs admitted the right and title of Lord Dernely as Earl of Lennox, after the date of their contracts of excambion. That they did so under an impression of the purely *territorial* nature of such dignities is scarcely to be doubted. Lord Mansfield to be sure expressed this opinion in his judgment on the

* *Supra*, p. 35, *note*. See also for other examples, *supra*, pp. 2, 29, 73. It is needless to multiply instances of a practice perfectly understood by every one at all conversant with ancient Scottish deeds.

† Stair, 3, 5, 11. Erskine, 3, 8, 13. Fordun, lib. ii. c. 5.

Lord Mansfield recognized the law in these words: "In England, whenever a peerage went to coheiresses it was in *abeyance*, and optional for the Crown to revive it. I take by analogy in such a case it went, in Scotland, to the *eldest* female."—*Speech in the Sutherland Case*, MS. Advocates' Library.

Sutherland case,—“With all due deference to the author of the case, (Lord Hailes) I am now satisfied there is no foundation for his territorial principle. It certainly does not now exist, and no man living can say when it did. It clearly must have ceased before 1214, when lands came in *commercio*, and adjudication went against them,”*—but it was more than two centuries after the date assigned by that great chancellor, as the period when territorial honours ceased, that John Lord Dernelly, and his son Mathew Stewart, both at the same time styled themselves Earl of Lennox, clearly because one was *fear* and the other *liferenter* of the Comitatus. This peculiarity can be explained only by admitting the territorial principle, and, indeed, the example finds its prototype in an age when even Lord Mansfield admitted that dignities were purely territorial. Sometime in the twelfth century there existed together, Alwin Earl of Lennox *senior*, and Alwin Earl of Lennox *junior*, father and son.†

But while it is obvious that it was to the territorial feeling of the times that the coheiresses of Rusky ultimately conceded their rights, the question remains, whether they legally divested themselves and their descendants for ever of all right and title to these honours? Certainly there never was a case in which that ancient and now obsolete principle appears so naked and meager in operating as a conveyance of such a dignity. It is not that the whole lands of the Comitatus of Lennox changed hands, accompanied by its territorial privileges. The lands were divided, and the respective portions retained, and held of the Crown by all the coheiresses. But one of these heirs purchased from the other

* MS. Advocates' Library.

† See *supra*, p. 2.

two, in very general terms, all their interest in the great superiority and patronages of the fief, without any more express reference to the dignity. Then this transaction did not pass through the sovereign, as was the practice even in such territorial transferences. It did not proceed upon a *resignation* into the hands of the Crown, followed by a re-grant to the purchaser. Dernely, having resumed the dignity upon a basis that had been judicially declared illegal by King and council, bargained for the rights of superiority, belonging to the other co-heirs, piecemeal and at long intervals, and then resigned that which was not feudally in his own person, into the hands of his sovereign for new charters. Now, although Lord Mansfield may have been wrong in his antiquarian views and historical opinion, most unquestionably the House of Lords, under his distinguished direction, *have ruled*, that circumstances far less equivocal than the *species facti* of the Lennox case for Dernely, cannot be listened to as founding an argument for the transference of a peerage, even in ancient times.

Upon the death of William Earl of Sutherland in 1766, a contention arose for the dignity.

1. A claim was instituted, by the guardians of his only and infant daughter Elizabeth, for her as heir-general of the earldom.

2. Sir Robert Gordon of Gordonstoun, Bart. claimed as lineal heir-male of Adam Gordon, who he alleged was created Earl of Sutherland about the year 1517, in consequence of his marriage with Elizabeth, sister of John Earl of Sutherland, who died in 1514 without heirs of his body.

3. George Sutherland, Esq. of Forse, claimed as lineal heir-male of the earldom.

It was admitted by all the parties, that no patent of the dignity of Sutherland could be produced, and that the limitation remained to be proved "from such writings and deeds of the family as have escaped the injuries of time, from similar or analogous instances, and from the general principles of law with regard to the succession of dignities."*

The competitors of the infant daughter of the last Earl had to establish that the limitations of the earldom of Sutherland excluded females, and they claimed the benefit of a *presumptio juris* to that effect, in the absence of patent or instrument of creation proving the contrary, because they maintained that ancient Scottish peerages were so limited as a general rule.

To this plea there was a very simple and triumphant reply for the infant. Elizabeth, the sister and heiress of John Earl of Sutherland, in 1514, and whose spouse, Adam Gordon, was alleged to have been created Earl of Sutherland, was in reality Countess of Sutherland in *her own right*, as heiress of her father, and the creation in favour of Adam Gordon, with its supposed limitation to heirs-male, was a fiction.

But Lord Hailes, who was one of the guardians for the young claimant, being shocked at this assumption, of a *presumptio juris* in favour of the male descent of Scottish peerages, when his lore in such antiquities informed him that the sound presumption was the very reverse, would not suffer it to pass. He brought his copious knowledge to bear upon the point in a celebrated work, unrivalled in the annals of litigation, and which is, to this day, our best institute of ancient peerage law. In the additional Case for his ward, he multiplied

* Lord Hailes.

charters conveying, in the natural line of succession, *totum et integrum Comitatum de Sutherland, &c. cum pertinentibus*, and always proceeding upon a resignation into the hands of the Crown, who gave out the new grant. Lord Mansfield, however, laid down the law, which was ruled by the House, that such charters were only to be considered as conveyances of the estate, having no application to the dignity.

If, then, either of the two coheiresses of Rusky had been seized in the whole Comitatus of Lennox, and had resigned *totum et integrum dictum Comitatum cum pertinentibus*, including every right of superiority and patronage belonging to it, in order to vest the same in Dernely, the House of Lords have declared, that such a transaction must be held to have operated as a conveyance of the estate only, without affecting the title, honour, and dignity of Earl of Lennox. But no such feudal conveyance occurred in the case of these coheiresses. They resigned nothing into the hands of the sovereign in favour of Dernely. They accepted a price for every right or interest they might possess in the superiorities and privileges of the fief; and, whatever their own understanding in the matter may have been, and however onerous the transaction among the contracting parties, it cannot now be doubted that the House of Lords would deny to those *contracts of excambion* the legal effect of operating as a conveyance of the dignity of Lennox.

This judgment in the case of Sutherland,—an occasion so important,—after a discussion so profound,—and under the direction of a chancellor so eminent as Lord Mansfield, *—rears the question, of the relative ages of Eliza-

* *Parvis componere magna*, Mr Riddell's work entitled "Remarks upon Scotch Peerage Law," (the nucleus of which curious and valu-

beth and Agnes Menteith, into one of great consequence in the Lennox case. For if the charters of excambion, which Lord Dernely elicited from those coheiresses in order to fortify his predetermined usurpation, be pronounced totally inadequate to have conveyed away the honours of the fief, it can be very distinctly proved that the right is still in the representatives of one or other of those ladies. There is no dubiety in this case as to the limitation of the earldom,—the royal charter to Earl Duncan, containing words expressly applicable to the dignity, is on record, and in virtue of that it was that Dernely served heir to him and assumed the title. The idea of forfeiture in the person of Earl Duncan is excluded by the fact of his eldest daughter's possession, and by the services and titles of the succeeding coheirs of that nobleman. That the fief had opened to the heirs-general of Earl Duncan is proved by the fact of the heirs-general having served to him in that character and parted his territory among them. It is proved that Lord Dernely represented the youngest daughter of Earl Duncan, and his own conduct amounts to an admission of the fact. The *genealogies* of the existing representatives of Earl Duncan's elder coheiress cannot raise a question, being proved, respectively, by the original re-

able collection is a very vulnerable doctrine,) is as much disfigured by the disrespectful manner in which he controverts Lord Mansfield, as is Mr Tytler's admirable History of Scotland by the same treatment of Lord Hailes. Mr Riddell, in his last publication, in order to cut down the reputation of the Inventor of Logarithms, quotes Scaliger in support of the *jejune* sentiment, that a great mathematician cannot be an illustrious genius, and adds, "that it is thought by some that mathematics contract the mind, and unfit it for other pursuits." Is the world, then, to hold in future that Lord Hailes was no historian,—Lord Mansfield no lawyer,—and Napier not a genius!

tours of their representation and lineage, from Earl Duncan down to the present day. The law of *prescription* cannot touch a peerage claim, which, it has been ruled, is independent of time and contrary possession.* That titles of honour are impartible, and by the law of Scotland belong to the eldest of coheiresses, is indisputable law,—stated by Lord Hailes, and declared *e cathedra* by Lord Mansfield. But which was the elder of the coheiresses of Margaret of Lennox,—was it Elizabeth of Merchiston, or Agnes of Gleneagles?

The consideration, that this question is the chief obstacle to the revival of the ancient earldom of Lennox in the present day, is that to which, probably, may be attributed the expressions used by Mr Riddell when illustrating his recent discovery for Gleneagles. Pointing to that new proof he says, “If admitted to be unexceptionable the consequences *may be great* in reference to the claim to the earldom of Lennox.”† No one would more cordially congratulate the learned author of the Tracts, for the achievement of the Lennox adventure, than would the author of these pages, were he satisfied that the question was set at rest, or even greatly elucidated, by Mr Riddell’s recent publication. But, before conceding the palm, we will trouble him for his rejoinder to the two following chapters.

* See an example of the freedom of honours from prescription *supra*, p. 43. Even had it been the case that Dernely obtained a special grant of the earldom of Lennox in his favour, to the prejudice of the senior branch, that would not have extinguished their right. See the noted case of Willoughby of Parham, reported by Cruise.—*Dignities*, p. 169.

As for the exemption of peerages from prescription, see the cases collected and illustrated by Mr Riddell in his *Remarks upon Scotch Peerage Law*, p. 120, &c.

† Tracts, p. 109.

CHAPTER XI.

PROOF THAT ELIZABETH MENTEITH WAS ELDER THAN AGNES—
 REPLY TO MR RIDDELL'S DISCOVERY FOR GLENEAGLES—MES-
 SUAGIUM ET MANERIUM.

WHEN a feudal vassal died, his heir, after attaining the age at which it was competent for him to enter the fee, was bound to pay to his superior a certain sum, called *relief duty*, as the feudal price of the renewal of the investiture in his favour. The Rusky estates in the Menteith, of which Elizabeth and Agnes Menteith were also coheiresses, were held of the Crown *per wardam et relevium*. Consequently the above casualty fell to the Crown when these young ladies, who succeeded to their brother Patrick, made up titles and relieved their lands out of the hands of their sovereign ; and the keeper of the royal accounts had to debit himself in favour of the Crown whenever the royal precept of seisin issued. Some of the Great Chamberlain Rolls, of an ancient date, containing such items, are still extant in the Register-House, Edinburgh, and afford many curious and valuable adminicles of domestic history.

In the *compotum*, or account, rendered at Edinburgh 21st October 1456, by William Murray of Gask, Sheriff of the county of Perth, of his receipts of royal dues and casualties from the 26th July 1454, down to the date of rendering the account, the following items occur :

“ *Et de xxxij^{li}. ij^s. j^d. de relevio medietatis terrarum de Thom et Lanarky, ac de Rousky, Regi debito*

per saisinam datam ELIZABETH de Menteth de eisdem. Et de xxxij^{li}. ij^s. jd. de relevio alterius medietatis dictarum terrarum, regi debito per saisinam datam AGNETI de Menteth, sorori dicte Elizabeth de eisdem."*

This record certainly affords the strongest grounds for presuming that Elizabeth was the elder of the two young ladies here mentioned, who, it must be observed, were among the most considerable coheiresses in Scotland. The important privileges attaching to the birth-right of the elder, and which rendered so consequential the fact of primogeniture, seems to exclude the reply that this relative position of their names,—in a public record which had special reference to their heritable succession and feudal services,—is an accidental occurrence, affording no argument of seniority in favour of Elizabeth. It must also be observed, that there is something more than the fact of the names occurring in simple sequence. There is a particular register of a feudal circumstance separately applicable to each of these young ladies; and the one named last in the record is designed sister of the former, thus indicat-

* "And the sum of xxxij^{li}. ij^s. jd. for the relief of half the lands of Thom and Lanarky and of Rousky, due to the King for seisin given to *Elizabeth* of Menteth in the same, and the sum of L. 32, 2s. 1d. for the relief of the other half of the said lands, due to the King for seisin given to Agnes of Menteth, *sister of the said Elizabeth* in the same." From the same account it appears that these sums were made over by the King to Alexander Napier, who was comptroller of the household, and the father-in-law of Elizabeth Menteth. I can discover no further light on the subject from these original records, which at various times I have minutely examined with that view. Mr Riddell, who is very accurate in these matters, says in his Tracts, that the account runs between the dates 26th July 1454 and the 1st of October 1456. I read the latter date, however, *vicesimo primo die mensis Octobris*, 1456. The difference is unimportant.

ing more particularly the leading position of Elizabeth, a minuteness scarcely consistent with the idea of careless or inaccurate arrangement. This independent, and most authentic, evidence affords an argument of primogeniture much stronger than that deduced for Gleneagles from the litigious activity of the husband of Agnes Menteith, in his proceedings against Dernely, and to which we find, upon a close inspection, that more than due weight has hitherto been given.

It has been already stated that this evidence was first detected by Mr Riddell, more than twenty years ago. In his recent publication, however, that learned gentleman, after taking full credit to himself for the discovery, suddenly produces a new piece of evidence in favour of Gleneagles, subsequently discovered, but at what period he does not say. But, with great submission, he has missed the point of his own discovery. Intending, as he so oddly terms it, "to render justice to the heir-general of Gleneagles," he produces what would not be received as evidence, of the particular point for that family, before any tribunal, while at the same time it affords unexceptionable evidence, for the family of Merchiston, of a fact very material to their case.

The discovery in question consists of two entries contained in an old and very confused volume of Acts of Council and Session. Mr Riddell has noticed these entries in a different order from that in which they occur in the book. I take the liberty, however, to follow the record.

There appears, classed under the date 29th July 1562, (more than a hundred years after the succession of the young ladies of Menteith) an act of *transference*, which runs thus :

“ Transferris the contract and appunctment and decreit of the Lordis of Counsell interponit thairto for the tyme, berand and contenand as followis : At Edinburge 2d August 1485, &c. in presens of the Lordis of Counsale underwritten,” &c. “ It is apunctit and finale endit betwix Jhone of Halden of Glennegas for himself, and James Halden his sone and appearand air, on that ane part, and Jhone Naper and Elezabeth his spouse on the uther part, anent the devisioun, depertesing, and deling of the landis of Ruske and Lanerk, lying in the steurtie of Menteth and sheriffdom of Perth, perteing to the saids perteis as portioners of the samyn, in manner and forme as efter followis, that is to say, the said Johne Halden *consentis*, *grantis*, and *admittis*, that the saidis Jhone Naper sall depert, devoid, and deile the saidis landis above-written *this wise*: In the first, that the said Jhone Halden and James his sone, as *eldest* portioneris, sall tak for the first chimmeis of Ruske, the place wytin the loche of Ruske, and for the place of the landis of Lanerk, the place and ” * * * * *

Here this fragment abruptly terminates, why or wherefore, no man alive,—nay, not even the author of the Tracts,—can tell. Had the matter remained in this state, it might have been supposed that the abrupt conclusion was simply in consequence of part of the record having been lost, for it breaks off at the end of a page, and the paging of the volume is comparatively modern. But some pages further on in the same volume, there appears a subsequent entry, which Mr Riddell places foremost, as his leading proof. It is *another* act of transference between the same parties, and of the very same contract, but this time the form is a little different.

“ Transferris, *wyt consent of the pertis procuratoris under-written*, ane contract *allegit* maid in presens of

the Lordis of Consale for the tyme," &c. then follows the words of the previous entry, which, however, it brings to a conclusion thus, " That the said Jhone Naper suld depert, devis, and deill the fairsaidis landis in this wise, in the first, that the said *umquhile* Jhone Haldane, and James his sone *as eldest* portioneris suld tak for ther *first chimmeis* of Rusky the place wytin the loche of Rusky, and for the place of the landis of Lanerik the place and biggings of Lanerk, and the said *umquhile* Johne Naper and Elizabeth his spous to cheise uthir twa chimmeise, quheir it plesit thame wytin the same landis, and to tak the Borland of Rusky for ther chimmeis gif thai pleise, and farther suld devoid the fairsaidis landis in twa evinlie pertis as thai best ma be depertit and devidit, as the said contract *allegit*, insert and registrat in the bukis of umquhile our soverane ladeis grandschiris consale, to have and havand the strenthe of ane decreit of the Lordis therof for the tyme, of the dait the secund day of August, the yeir of God J^m. four hundred lxxxv. yeirs, at moir lenthe proportis. IN Jhone Haldane of Glennegas, successor to the saide umquhile Jhone Halden of Glennegas, and heretabill possessor of that ane half of the fairsaidis landis, wyt the pertinentis *active*, and in Archibald Naper of Merchamstoun as air, at the leist successor to umquhile Johne Naper of Merchamstone, and portioner and heretabill possessor of the uthir half therof, *passive*, and decer-mis and ordainis sicklike lettres to be direct at the instance of the said Jhone Halden, against the said Archibald Naper of Merchamston, for *compelling of him to fulfil* the fairsaid contract and decreit in all points, after the tenor of the saymn, *as myt or suld heife bene direct* at the instance of the said umquhile Jhone Halden, agains the said umquhile Jhone Napier of Merchamstone, for

compelling of him to fulfill the foirsaid contract and decreit, efter the forme and tenor therof, schewin and producit before the saidis Lordis. The said Jhone Halden of Glennegas compeirand be Maister Alexander Mauchane, his procurator, and the said Archibald Naper of Merchamstone, be Master Jhone Abircrumby, his procurator, and that lettres be direct to the effect forsaide in forme, as effeirs."

It cannot be conceded to the author of the Tracts, that by the first entry quoted, "We are thus presented with *part of the original contract* in 1485." By the fragment in question, it is not proved that such a contract ever existed, or at least, that John Napier and his spouse had ever become parties to it; and the whole circumstances under which the fragment appears tend rather to the conclusion, that the existence of such a contract and decree in 1485 was never proved by better evidence than the allegation of the party in the year 1562. Mr Riddell himself informs us, that, "After *due examination*, nothing further has transpired, nor in *any register or quarter whatever*, has more been detected of the original contract." The object of that process was simply and solely to transfer into the person of the laird of Gleneagles in 1562 whatever right to pursue for fulfilment of the alleged contract *might have been* in the person of the laird of Gleneagles in 1485. There is something peculiar, too, in the double entry. The first simply, "Transferris the contract and appunctment and decreit;" the second only transfers, with consent of parties, "ane contract allegit maid." But it does not appear that, even in 1562, the original contract and decreit were either produced and verified, or admitted.

Neither can it be conceded to the author of the Tracts

that there is any thing in this inconsequential process of transference from which it can be inferred, that the procurator acting for Merchiston *admitted*, upon their part, "the fact involved in the words eldest portionaris, applied to the Haldanes." Mr Riddell seems inclined, by a cautious but somewhat distorted mode of expression, to rear some such admission as an ingredient in his case for Gleneagles. The fact of primogeniture involved in the words of the contract, he says, "*in a manner may be acquiesced in by Napier.*" But every one acquainted with the nature of this process of transference (which merely connected Haldane with his ancestor in that matter) will at once perceive that no such inference can be drawn; and Mr Riddell's not very intelligible qualification, "*in a manner may be,*" really seems to imply that learned gentleman's own suspicion that no such acquiescence was involved.

It is remarkable that all the most plausible evidence in support of the primogeniture of Agnes Menteith, Haldane's lady, when viewed closely, leads to the opposite inference, namely, that she was younger than her sister Elizabeth. Haldane's long and pertinacious litigation with Dernely at first sight appears to argue that he stood forward as in the right of the leading coheiress of the earldom of Lennox. But the details, as we have shown, are irreconcilable with that theory, and substantiate nothing, unless it be this, that the parties contending were the *second* and the *last* of three interests, the *first* not being in the field. In like manner, this new piece of evidence will bear no inspection in support of the primogeniture of Agnes Menteith, and will even be found to afford a contrary inference.

So far as we obtain any view of this contract, it simply provides the ordinary disposal of the messuages in

the case of a division between coheiresses. If Haldane's lady was really the eldest, there could be no question that she or her representatives were entitled to the principal messuages, nor could there have been the slightest difficulty in making good this right against Napier and his lady, Elizabeth Menteith. The proper form in such cases was to take out a brieve of division, directed to the Sheriff of the district, who impannelled a jury on the matter, and their decision was put in form "of ane rolment and decrete of the said inquest," upon which proceeded the Sheriff's precept to put the parties in possession. And this accordingly appears to have been the very course of procedure adopted in the case of the coheiresses of Orchardton, with which Mr Riddell illustrates his argument. What, then, was the meaning of the *contract* in this case, wherein John Haldane *consents, grants, and admits*, that particular mode of division which was to recognize him and his as *eldest portioneris*? If he were *not* eldest portioner, an abortive attempt to effect a contract recognizing him as such is conceivable; but upon the supposition that *he was* the eldest, why he urged his claim of primogeniture by way of this very unilateral-looking contract; and, moreover, why he was so unsuccessful that all he or his descendants ever could make of it was *another unsuccessful attempt*,—when, nearly a century afterwards, they try to raise this alleged contract from the dead,—is utterly unintelligible.

The strong inference against the primogeniture of Agnes Menteith afforded by the peculiarity of Haldane's pleas in his litigation with Dernely, we find to be strikingly confirmed by the relative position of the young ladies' names in the Great Chamberlain Roll. Let us look then for some other independent fact to support

the scale in favour of the latter, from whom he hints that justice has been withheld, the grand result of his discovery, and summing up of the evidence, is "*a kind of puzzle that is perplexing.*"*

Before proceeding to illustrate the valuable evidence for Merchiston derived from the charters of Rusky, I shall throw some further light upon the conduct of Glen-eagles in reference to this succession, from which it will appear that, even supposing that the contract of 1485, mentioned in the process of transference 1562, ever existed, which, however, *is not proved*, there can be no stress whatever laid upon the circumstance that John Haldane claimed the rights of the *eldest* coheiress of Rusky.

If that gentleman actually maintained such a pretension, it would be nothing remarkable to find that he had done so in the face of the utmost notoriety that Merchiston's lady was the elder of the two sisters. He was at the very time learning a lesson of the kind from Dernely, and there is abundant evidence that Haldane was in like manner pursuing a violent course of usurpation against John Napier and Elizabeth Menteith, and that nothing is more likely than that he should have framed, and attempted to induce that branch of the succession to adopt, some arrangement prejudicial to their just rights.

1. Among the Merchiston papers I find the following document under the privy-seal and sign-manual of James III.

* Tracts, p. 109.

under our Signet at Edinburgh the first day of October
and of our Regne the xxii zere. *Per S. D. N. Regis.*

This is evidence of very violent and illegal conduct, repeated against the King's authority, and in usurpation of the lawful possession of John Napier and his sister; and it occurs in the year 1482, just three years prior to the alleged contract in 1485 *ex facie* of which there appears so much assumption on the part of Sir John Haldane of Gleneagles.

2. But there is also among the Merchiston papers a long Latin protest, dated only a few months after the alleged contract, and in reference to the very subject of the division of the Rusky estates and the appropriation of the *principal messuages*, which places beyond question the fact of Haldane's inclination, and earnest endeavour to deal unjustly and illegally by the correlative rights of Merchiston.

This original instrument narrates, that upon the 4th of October 1485, Elizabeth Menteith personally, and John Napier, chaplain, as procurator for her husband John Napier of Merchamstoun, appeared at the Down in Menteith, and there in presence of William Edmonstone of Duntreath, sheriff of Menteith, and various other witnesses, specially called for the purpose, pro-

tested under the following circumstances, and for the following reasons. It was then and there publicly declared by the parties protesting, that "certain procuratorial letters produced by Robert Cunygam, procurator for *John Haldane* of Glenegas, for the division of the lands of Rusky and Lanerky, and the appropriation of the principal messuages of the said lands,* were of no avail, invalid, and in themselves null and void. *First reason.* There was no mention whatever made, in these procuratorial letters, of *James Haldane*, neither was there any compearance made for him, personally or by procuratory, for entering into or concluding the said process of division of the said lands, though he was in the fee of the said lands, and heir of the same, and that no division could be legitimately effected or entertained without his presence or procuratorial authority. *Second reason.* John Haldane's own procuratorial letters were by no means in accordance with the legal form and tenor requisite, in so far as the said John Haldane conferred upon his procurator, Robert Cunygam, the power of taking possession of and receiving in his name the principal mansions, that is to say, the messuages of Rusky and Lanerky, without making the slightest mention of delivering, viewing, or measuring the said principal mansions or messuages, in behalf of the said John Napier and Elizabeth his spouse.† *Third reason.* The

* "*Pro divisione terrarum de Rusky et Lanerky, ac le chemeses capcione earund.*"

† "*Eo quod potestatem sepe dictus Johannes Haudane dicto Roberto suo procuratori dedit et exhibuit capiendi et recipiendi suo nomine mansiones principales le chemeses de Rusky et Lanerky, et ad dand. vidend. seu mensurand. mansiones principales le chemeses in dictis terris de Rusky et Lanerky pro dictis Johanne Naper, et Elizabeth ejus sponsa, minime mencionem fecit.*"

said letters of procuratory contained no particular date of indurance, as by law they ought, and the said John Haldane of himself conferred power upon the said Robert, of taking possession of, but not of delivering on his part, the divisions of the lands themselves, and of the principal mansions, and this the said John Haldane conferred in his procuratorial letters, singly and separately, without any mention whatever of *James Haldane*; and that the said John was not in the fee, nor had any right of inheritance in the said lands of Rusky and Lanerky; and further, the said Elizabeth Menteith having demanded a copy, at her own expence, of John Haldane's procuratorial letters, the said Robert Cunygam publicly refused to give her a copy."

For all these reasons, Elizabeth Menteith in her own name, and the chaplain in name of her husband, "*protested* that they were ready and willing to act upon, take out, fulfil, and record a decree and ordination of the Lords of Council, in terms of an award, according as they should be fortified before-hand by the preliminary security of an honourable man William Edmonstone of Duntreath, and sheriff of Menteith, by his letters-patent."* They further protested "that the said procuratory for division of the lands of Rusky and Lanerky, and the taking possession of the principal mansions, was null by default of the said John Haldane and James his son, and not of John Napier and Elizabeth; and, therefore, they protested for remede of law, and for other reasons regarding the said procuratorial letters as would more fully appear before the competent judge," &c.

* "*Pro ut premuniti fuerint premunitione honorabilis viri Vilielmi Edmonstoun de Duntreath ac senescalli de Menteth per suas literas patentes.*"

This is a curious and important document in reference to the fragment of an alleged contract, so imposingly illustrated by Mr Riddell for the purpose of doing justice to the house of Gleneagles. If upon the 2d of August 1485 a contract *was concluded* between the Haldanes and the Napiers, in which the former were admitted to be the elder portioners, and entitled to the "first chimmeis of Rusky, the place within the loche of Rusky, and for the place of the landis of Lanerik the place and bigging of Lanerik," while the latter were to have inferior dwellings ;—if this contract was actually (as the act of transference in 1562 says was *allegit*,) "insert and registrat in the bukis of consale to have and havand the strength of ane decreit of the Lords thereof,"—if, in short, all went so smoothly for Gleneagles "as eldest portioner," how comes it that before the 4th of October 1485, he had been attempting to divide the lands and appropriate the messuages in the extraordinary and illegal manner, against which John Napier and Elizabeth Menteith of that date successfully protested? Is it possible that at the very time when, as alleged, this contract, which bears "that the said *John Haldane consentis, grantis, and admittis* that the said Johne Naper, sall depert, devoid, and deile the saidis landis *this wise*," &c. had obtained the consent of parties and the force of a decree, the same John Haldane should have been attempting another process of a totally different description, and so illegal as to have no chance of success against any party not inclined to yield their rights without a murmur. Upon the assumption that such a contract was actually framed of the date alleged in the act of transference, it can be reconciled with the narrative of the above protest, only upon the supposition that it was an *abortive attempt* on

the part of Haldane to usurp the patrimonial rights of the eldest coheiress. There is not a shadow of evidence produced, that either John Napier or Elizabeth Menteith were parties to that contract, or that it ever became matter of judicial record ; while, on the other hand, this original instrument of protest is proof positive that the contract in question was not even attempted to be put into effect by Haldane himself. The act of transference in 1562 must, under all the circumstances, have been a ridiculous and useless process, for, independently of the lapse of nearly a century, during which period the portion of the *eldest* coheiress had confessedly been possessed by Merchiston, here is evidence that Haldane himself was, in 1485, met by a protest for attempting to effect a division of the Rusky estates upon an illegal footing. What can be gathered from all this, except that while, on the one hand, John Napier and Elizabeth Menteith were, in terms of their protest, ready and willing to meet Haldane in a proper legal arrangement of their correlative rights, under the sanction of the Lords of Council, and the Stewart of Menteith, Haldane, on the other hand, was struggling by means of contracts of his own wording, and illegal letters of procuratory, to usurp the rights of others, in which, however, it is plain *he was not successful*.

3. The above protest, and other documents to which attention has been called, are not the only evidence of the disposition of Gleneagles to usurp the rights of the other coheiress. It appears from the Merchiston papers that when, in the year 1490, Elizabeth Menteith obtained an instrument of division, allotting to her the particular lands composing her quarter of the fief, she had not failed to summon all the heirs-portioners as parties to that transaction, that her rights might be forti-

fied by their express consent. Yet in the beginning of the year 1492, it seems that James Haldane took out brieves for a division of the whole Comitatus, without any reference whatever to the rights of Elizabeth Men-teith, or to her legal establishment in a particular portion of the lands. That lady accordingly was compelled to present the following petition and complaint to King and Council, dated 14th June 1492.

“Sovrañe Lord, Unto your gracijs hienes, and to the Rycht Reverend, noble and mychtie Lordis of your Counsale, humbly meins and shewis your servitour and wedow Elizabeth Lady of Rusky, that quhar the lands of the erledome of Levinax was devidit of befor be your conrisable brevis of division of your chapell, and be the consent of the Erle of Levinax, Matho Stewart his sone, Johne of Haldane of Glennegas, and James of Haldane his sone, the landis underwritten was devidit and assignit to me for my parte of the properte of the said Erledome, as autentik writtis and instrumentis of thair said consentis beris. That is to say, the landis of Gartnes, Dalnair, Blairour, Gartquharn, Ballattis, Dowchlas, Badvow, Edinbaly, Ballaquharn, and Tumdarow, with the half of the Ile of Inchestavanok, Castlegile, with the quarter of the fischenings of Levin and Lochlowmond, with myllis, woddis, and pertinentis of the samyn; in the quhilk I am in peaceable possession, and gevis soit in your Parliament, justice aris, and sheref courtis therfor. Notwithstanding, James Haldane has purchest of late new brevis of division, direct to your shireffis of Stirueling and Dumbertan, and to certain utheris shirffies in that parte, to devide the said hale erledome, *als wele my parte forsaid that is assignit to me, as the laif*, quhilk as I understand is *express contrair to justice*. Beseking therfor maist humbly your gracious Hienes and Lord-

schippes, that I may have your lettres direct to your said shireffis to keip me in the said landis that is dividit and assignit to me for my parte, after the forme of the division maid therapon ; and to discharge the saidis shireffis, and shireffis in that parte quhasumevir, of the intronetting therwith, sen thai ar devidit be the full consent of the said porcioneris as said is, and your gracious answer herapon at the reverence of God."

Upon this petition the Lady of Rusky obtains, of the same date, royal letters narrating the cause of her complaint, and commanding the sheriffs to protect her in her possessions. Accordingly, in the subsequent division of the earldom between Dernely and Haldane, a special clause is inserted in all the deeds connected therewith, excluding from that division the quarter of the fief already allotted to Elizabeth Menteith, and fully admitting her right therein.

4. It is remarkable that there are some indications of this disposition of the family of Gleneagles, to usurp the rights of Merchiston, even in the following century, and not long before the period of the act of transference, in 1562, of the alleged contract in 1485. The earldom of Lennox fell into the hands of the sovereign by the temporary forfeiture of Mathew Stewart, fourth Earl of that race, in 1545. The Napiers of Merchiston, as we have seen, held of those Earls the lands of Blairnavaidis, Isle of Inchmore, &c. by way of *excambion* for the rights of superiority belonging to Elizabeth Menteith in the Lennox. It would appear that the then Haldane of Gleneagles, probably taking advantage of the confusion of the times, and the minority of Archibald Napier, (great-great-grandson of Elizabeth Menteith, and father of the philosopher,) had obtained a grant of Blairnavaidis, &c. to the exclusion of the Merchiston family.

In the year 1558, however, before the Earl of Lennox was restored, and shortly after the marriage of Queen Mary to the Dauphin, that princess issued a charter revoking the grant to Gleneagles, and reinstating the family of Merchiston in their patrimonial rights. The precept of seisin under the Great Seal of Mary is dated 14th July 1558, and narrates that the lands of "Blairnavaidis, eister and wester, with the Isle of Inchmone, and the right of fishing over the whole of the lake of Lochlowmond, &c. which belonged to Archibald Napier, holding of Mathew late Earl of Lennox, and which have fallen into our hands by reason of escheat and process of forfeiture against the said Mathew, and which after the decree of forfeiture we, in our minority, had granted by charter under our Great Seal to James Haldane of Gleneagles, his heirs and assignees, and which lands and islands having again fallen into our hands by reason of our general revocation, made in our last Parliament, and we considering that the predecessors of the said Archibald Naper had obtained the said lands in excambion from the predecessors of the said Mathew late Earl of Lennox, and in order that they may have regress to their first excambion, and also because the said Archibald and his predecessors were in no manner of way participators in the crimes of the said Earl, but were innocent of the same, and have in all times past faithfully obeyed the authority of our realm, even to death, and have, under the standard of our dearest grandfather, and under our own standard, in the battles of Flowdown and Pinkie, been slain ;—therefore, and for other good causes moving us, we, after our general revocation in Parliament, have of new given and granted to the said Archibald Naper of Merchamstoun, his heirs

and assignees, the said lands of Blairnavaidis, eister and wester, isle, fishing," &c.

After all this evidence it may be doubted if the confused and futile remnant of the process of transference pointed out by Mr Riddell could have those great consequences in the question of the right to the earldom of Lennox, which he anticipates, even supposing there was no proof of primogeniture to place against it. It might be conceded, (though it is not proved,) that in 1562, among the Gleneagles papers and processes, contracts, *so called*, may have been discovered, in which the rights of the *eldest portioner* were claimed; but, after the details given above, probably the reader will require evidence that such contracts were actually successful and fulfilled, before the expressions contained in them obtain the slightest credit.

We have now to consider the evidence in favour of Merchiston, derived from the possession of the messuages, which affords so complete a refutation of any argument that may be supposed to arise out of the act of transference; and which, Mr Riddell himself declares, occasions when contrasted with the latter evidence, "a kind of puzzle that is perplexing." But that learned antiquary has not fully brought out the value of this evidence for Merchiston. He only observed in the record of the Great Seal, the possession of the messuages by Archibald Napier subsequent to the death of his mother the Lady of Rusky, and he speaks very cautiously of what he is pleased to call "the *seeming* possession of the *messuagium* or *mansion* by the Napiers in 1512, and 1572, while the Haldanes, previous to the last date, *claimed* the principal chemise or messuage, if not actually entitled to it,"—thus depreciating as far as possible the

fact for Merchiston, and giving more than its due weight to the inference for Gleneagles arising out of the fragment discovered in the records of session. I shall therefore proceed to show, that there can be no question that Elizabeth Menteith was by right of inheritance in possession of the messuages or mansions of the Rusky estates, that she transmitted them to her son, from whom they passed in lineal male descent to the Inventor of Logarithms.

1. Archibald Napier obtained a charter under the Great Seal, dated 23d October 1507, of half of the lands of Rusky, half of the lands of Thom, half of the lands of the three Lanarkynis, half of the lands of Cowlach, called Sauchinthom, with all the pertinents and privileges thereof. This charter proceeds upon the resignation of those lands by his mother into the hands of the King, who confers them by this new charter upon Archibald, and incorporates with them in the same charter the lands of Cailzemuck, with the fishings in the water of Teth and lake of Gudy (*stagno de Gudy*,) which latter property pertained to Archibald himself as heir of his father the late John Naper of Merchamstoun. In all the repetitions of the lands of Rusky, &c. enumerated in the deeds connected with this transaction, the messuages are named, "*cum mansionibus omnium dictarum terrarum*;" all which lands, mansions, fishings, woods, &c. it is declared, belonged by right of inheritance to Elizabeth Menteith, "*fuere dicte Elizabeth hereditarie*;" and were resigned by her in the King's hands to be given to Archibald Naper "*heredi apparenti Elizabeth Menteith Domina de Rusky, matris sue*." This connects the messuages, possessed by the family of Merchiston in the Menteith, with the *inheritance* of Elizabeth Lady of Rusky.

2. Two years after this, Archibald Naper obtained another charter, upon his own resignation, of the Lennox and Menteith estates, to be incorporated into one free barony. The charter is dated 21st May 1509, and seisin followed thereon 3d December 1509. In these deeds the messuages are still more particularly mentioned in all the repetitions of the Rusky estates; *dimedietatem terrarum de Rusky cum messuagio, dimedietate lacuum, &c.—dimedietatem terrarum de Thom,—dimedietatem terrarum de tribus Lanerkynnis—cum manerio et messuagio infra dictas terras de Thom nunc vocato Barnysdale per dictum Archibaldum et matrem suam de novo edificato.* This also proves that Elizabeth Menteith had been in possession of the messuages, and that that lady and her son had rebuilt or repaired the ancient messuage of the lands of Thom.

3. Another charter of the barony, in favour of Alexander, son and heir of Archibald Naper, dated 21st June 1512, in like manner describes the lands and pertinents; *“dimedietate omnium terrarum de Rusky cum messuagio, manerio, dimedietate lacus, &c.—dimedietate terrarum de Thom,—dimedietate terrarum de tribus Lanerkynnis, &c. cum manerio et messuagio infra dictas terras de Thom nunc Barnysdale vocato per dictum Archibaldum et quondam Elizebetham Menteith matrem suam de novo edificato; cum domibus, pomeriis, lie outsettis et pertinentiis.”*

4. After the death of Sir Alexander Napier at Flodden, his son and heir, Alexander, was infeft in the barony of Edinbelly, and in his seisin there is the same enumeration of messuages, &c. *“de dimedietate omnium terrarum de Rusky cum messuagio, manerio, dimedietate lacus,” &c. “de dimedietate terrarum de Thom, de dimedietate terrarum de tribus Lanerkynnis, &c. cum ma-*

nerio et messuagio *infra dictas terras de Thom nunc Barnisdaile vocato, cum domibus, pomariis,*" &c. This seisin is dated 11th March 1513. •

5. In like manner, after the death of the last mentioned Alexander Napier at Pinkie, his son and heir, Archibald, was infeft in his paternal baronies. The same expressions occur in his seisin; *ac etiam cum dimedietate omnium terrarum de Ruskye, cum messuagio, manerio, dimedietate lacus,*" &c. "*de dimedietate terrarum de Thome, et dimedietate terrarum de tribus Lanerrykis*" &c., *cum manerio et messuagio infra dictas terras de Thom nunc Barnisdaill vocato, cum domibus, pomariis,*" &c. This seisin is dated 8th November 1548, twelve years prior to the date of the *act of transference* pointed out by Mr Riddell, and which, obviously, was some futile attempt to rear up against the above-mentioned Archibald an alleged contract and decree dated in the year 1485, and contrary to the alleged terms of which the principal messuages of the Rusky estates had been thus possessed by Elizabeth Menteith and four of her lineal male successors.

6. That this attempt did not succeed is manifest from the fact, that John Napier, the Inventor of Logarithms; against whose father the process of transference was directed, obtains upon the occasion of his marriage a charter of the fee of his paternal baronies, and in that charter the same messuages are enumerated; "*dimedietate omnium terrarum de Rusky, cum mansione, manerie loco, dimedietate lacus,*" &c. "*dimedietate terrarum de Thome, dimedietate terrarum de trie Lanerikis,*" &c. *cum mansione, manerie et loco infra dictas terras de Thome,*" &c. The philosopher's marriage settlements are dated in the years 1572 and 1573.

I am not aware that any charter of the family of Gleneagles, relative to these estates, can be produced, in which any mention is made of the messuages or mansions of Rusky and Thom. The charter under the Great Seal of the erection of the barony of Haldane is dated 29th January 1508, and in that the Gleneagles half of the lands in question are thus described; *totam et integram dimedietatem terrarum de Rusky cum manerio*," &c. but without any mention of *messuages* or *mansions*; *maneria* frequently occurs in the Gleneagles' charter, but never *messuagium*, except in a clause of erection to be immediately noticed.

There is another distinction between the respective clauses of these charters of barony, not observed by Mr Riddell, but which is of some importance in the present consideration. In the Gleneagles charter, as would appear from the phrases used, it was necessary to insert an express clause *ordaining* the *mains* of that portion of Rusky to become the *principal messuage* of the new barony. The words are, "*ac volumus et ordinamus manerium de Rusky principale fore messuagium ejusdem baronie, et quod unica sasina apud dictum manerium, &c. erit sufficiens pro tota et integra predicta baronie*." On the other hand, in the contemporary charter erecting Elizabeth Menteith's portion into the barony of Edinbelly, *messuagium* having been continually enumerated as well as *manerium*, there is no clause ordaining the constitution of a *messuagium*. The clause regarding the seisions of the barony is simply in these terms, "*ac volumus quod unica sasina capienda per dictum Archibaldum et heredes suos apud dictum messuagium*," &c. shall suffice for the whole barony.

Here it may be proper to offer a few remarks with

respect to the relative meaning of the terms *messuagium et manerium*.

The learned author of the Tracts is somewhat perplexed by the fact, that in the Merchiston share of Rusky both *messuagium* and *manerium* are enumerated, while *manerium* is also mentioned in the Gleneagles portion, but not *messuagium*. He first broaches the theory, "That although anciently the eldest coheir had an undoubted right to the chief messuage, yet the notion was entertained that she should make some compensation for it to the younger coheir, and in this way the property of the *manerium*, which with us *only meant the land contiguous to the mansion-house*, and had not the extensive signification as in England, may have devolved upon Agnes."* No sooner is this uttered, however, than our ingenious antiquary destroys his own theory by recurring to the fact, "That, by a charter to Sir Alexander Napier of Merchiston, dated 21st June 1512, he has not only the half of Rusky *cum messuagio*, but also the *manor*;" and he adds, "This, however, might be explained by the observation of Skene, that the '*principal maines (manerium) suld not be divided*, but should remain with (a man's) aire and successoure *without divisione*, together with the principal messuage, and full satisfaction should be made to his wife or relict therefore furth of the *second mainnes* or utherwise.'" But this very explanation shows that Mr Riddell's definition of *manerium*, as meaning with us "only the land contiguous to the mansion-house," is not to be relied upon. It is singular, too, that the same author in another publication, makes it *include* the mansion-house. In his

* Tracts, p. 98.

“ Reply to the misstatements of Dr Hamilton of Bardowie,” speaking of the manerium of Dalserf in 1381, he observes, “ *Manerium* with us in later times comprised, besides the *principal messuage*, the *terræ dominicales*, which were not inconsiderable, and allotted to the support of the baron and his retainers.” It is thus not easy to reconcile the definition of *manerium* in the Tracts, with that to be gathered from the dispute with Bardowie; nor to extract from either an elucidation of the relative meaning of the terms as used in the charters we are considering.

There seems to be no doubt that the term *manerium* was used in England to express, sometimes the principal messuage of a barony, or *caput baroniæ*, and sometimes the whole estate or barony. Nor can it be said that in Scotland *manerium* has invariably been used in a sense subordinate to the *caput baroniæ*. Long before the date alluded to in the Reply to Bardowie, both in the reign of Robert I. and David II., *capitale manerium* was sometimes used in the sense of *capitale messuagium*. But it is equally undeniable that in Scotland *messuagium* generally obtained, in reference to the feudal customs and privileges of a barony, a signification distinct from *manerium*. Skene, in his glossary, defines the latter term as the *mains*, or domestic farm of the barony, and adds, that if a man leave “ twa mains,” the principal one should go undivided to his successour, “ *togidder with the principal messuage*.” This is confirmed and illustrated by the respective charters of Gleneagles and Merchiston, where the terms are contrasted, and where *messuagium* is obviously used as the mansion *par excellence*. Not, however, that *manerium*, in these charters at least, “ only meant *lands* contiguous to the mansion-house.” These home farms seem to have com-

prised a place or steading of their own, for in the Merchiston charters there are enumerated, *messuagio, manerie* et loco*, &c. and in the charter of the barony of Haldane, the *manerium* is ordained to become in future *principale messuagium dicte baroniæ*.

Messuagium, on the other hand,—which Skene defines “an principal dwelling-place or house *within ane baronie*,”—always had that determined signification, nor is there any instance, that I am aware of, where *messuagium* is ordained *principale fore manerium*.

Upon the whole, then, there appears little difficulty in the interpretation of the respective charters of Merchiston and Gleneagles. In the former, the half of the lands of Rusky, &c. with the principal messuages or mansions, and certain mains, or domestic farms (probably the principal) are enumerated. In the latter, the other half of the lands of Rusky, &c. with their mains, are enumerated; but this, the inferior portion of the Menteith baronies, had lost the dignity of messuages, and only acquired it again when re-erected into the barony of Haldane.

But this illustration of the distinction in question has become of minor importance since the evidence afforded by the act of transference produced by Mr Riddell. For whether the above antiquarian considerations be accu-

* *Maneria-æ, manerium-ii, or maneries-ei*, three forms of this semi-barbarous, or low-Latin term, is thus defined by *Vossius* in his treatise *de Vitiis Sermonis et variis Glossematis*. “*Maneria vel manerium habitatio cum certa agri portione*.” In the Merchiston charters the phrase sometimes is *cum messuagio et manerio*, and sometimes, *cum messuagio, manerie et loco*; this is from *maneries*, for in the same charter there occurs *cum castris, turribus, fortaliciis, maneriebus*, &c. This occurs in the charter of barony to John Napier in 1572, referred to in the text.

rate or not, the fact is unquestionably proved, even by the evidence produced for Gleneagles, that Elizabeth Menteith, and her lineal successors for many generations, possessed the principal messuages or mansions of the Rusky estates, to the exclusion of her sister Agnes and her descendants. It is really singular that this acute antiquarian lawyer should not have perceived that what he now produces proves nothing for Gleneagles, while it affords most important evidence for Merchiston. It does not prove that the contract alleged ever existed, and, if it did, there is no proof afforded of the truth of the expression founded upon in that contract. But it does prove that, at least down to the year 1568, the principal messuages were *actually possessed* by the family of Merchiston, the object of the act of transference (a step never followed out) being to defeat, if possible even at that late hour, the patrimonial arrangement to that effect, which, obviously, had not been conceded to Merchiston by any compromise, but asserted by that family *in foro contentiosissimo*. It only remains to illustrate the value of the fact as evidence of primogeniture.

The territorial principle which, in those feudal times, and before the practice of holding peerages by patent, so naturally ruled the transmission of honours, gave rise to the importance attached to the chief messuage, and there is no doubt that, had Rusky been a *Comitatus*, this possession on the part of Elizabeth Menteith would have been equivalent to an assumption of the dignity. The chief messuage represented the dignity of the baronial estate. The fief might become partially dismembered, but the feudal possession of the chief messuage still held it together, and the feudal dignity seemed co-existent with its tenure.

A remarkable instance of its importance and prerogative is afforded by a feudal transaction which occurred in the very year when Elizabeth Menteith made good her possession of a quarter of the Lennox, though she was not sufficiently powerful to take the messuages. I shall give the illustration in the words of Lord Hailes. "In 1488, James III. bestowed the title of Duke of Ross on the Earl of Ross. The Duke of Ross having embraced an ecclesiastical life became Archbishop of St Andrews, and commendator of Dunfermline. Possessed of so ample an equivalent he resigned his estates into the hands of his brother James IV. According to the ideas of that age, the resignation of the whole estate would have carried with it the titles of honour. Thus, for example, it is plain from act 41, Parl. 2. James II. that the resignation of the Reid-castle would have carried with it the *dominium* of Ross 'pertaining thereto.' For avoiding this consequence the Duke of Ross reserved either the *principal messuage*, or the *moote-hill* of each estate."*

It follows of course that the chief messuage, or *caput baroniæ*, was *impartible*, and in the case of coparceners appertained to the portion of the eldest. "The capital messuage, (says the same distinguished lawyer) and jurisdictions, are no less indivisible than a peerage. They have gone constantly to the eldest heir-general by the ancient customs of Scotland.†

The *Regiam Majestatem* is the oldest code of Scotch law extant, and whatever its origin and history may be, it is sufficient for the present argument to observe, that it was established authority at the period in question,

* Sutherland Case.

† Ibid.

and that Sir John Haldane quotes it repeatedly in his process against Lord Dernely.

I shall quote from the ancient translation by Skene. "The dochters succed to the father. Gif there be *ane dochter*, the like is to be said of her as is said of ane sonne. Gif there be *moe dochters nor ane*, the heretage sall be divided amongst them; quhither their father was ane *socco-man*, or ane knight, or ane burges, or anie other frie man. *Reservand the chiefe messuage to the eldest dochter.*" All the authorities, ancient and modern, concur upon the point;* and by what theory it can be explained that Elizabeth Menteith obtained possession of the messuages of her father's baronies to the exclusion of Agnes, unless it was in virtue of primogeniture, is for them to discover who maintain that she was the junior coheiress.

* See Craig, *De Unione*; Stair, Erskine, Bracton, Blackstone, Cruise, &c.

CHAPTER XII.

FARTHER PROOF OF THE PRIMOGENITURE OF ELIZABETH
MENTEITH.—CONCLUSION.

WHEN we consider that nearly four hundred years have elapsed since the coheiresses of Rusky were born, and the many chances and changes of time through which the documents of their respective families have passed, it is more remarkable that so many of those documents should still be extant, than that so few can be found to solve the question of primogeniture.

It is proved by the excerpts already quoted from the Great Chamberlain Roll, that both of these young ladies had taken out their precepts of seisin, for infeftment in the lands of Rusky, &c. some time between the dates 26th July 1454 and 21st October 1456. An heiress, as shall be afterwards shown, was of age to be seized in her lands when she had completed her fourteenth year, and not sooner. The only indication afforded, by the record quoted, as to which of these young ladies had first arrived at that age, is in the very significant sequence of their names already commented upon. The dates of their respective services or seisins, when compared, might throw further light upon the matter, but unfortunately neither the retour nor the seisin of Elizabeth Menteith, in the Rusky estates, is to be found, though the retour of Agnes is yet preserved among the Glen-eagles papers. In the Merchiston charter-chest, how-

ever, there is the original *maritagium*, or gift of the marriage of Elizabeth to John Napier, and this, when strictly compared with the retour of Agnes, and the record of relief duties, will be found to afford most conclusive evidence of the primogeniture of Elizabeth. This evidence, however, requires some preliminary illustration in order to enable those to appreciate it, who are not in the habit of considering such documents.

Maritagium of Elizabeth Menteith.

“ Marriage (says Mr Erskine) in the feudal sense of the word, or *maritagium*, is that casualty by which the superior was entitled to a certain sum of money to be paid by the heir of his former vassal who had not been married before his ancestor's death, at his age of puberty, as the avail or value of his tocher. Though this casualty be no where mentioned in the written feudal usages, it was received in Scotland as part of the feudal plan as early as the books of the majesty. This casualty, if we are to rest on the authority of 9 *Attach. c. 93. s. 2.* took its rise chiefly from the right which superiors were understood by our old law to have over the person as well as the estate of the minor heir ; in virtue whereof they claimed the sole power of giving him a wife, and at last demanded as their due what the heir might have got by her in name of tocher.”

This law was equally applicable in the case of a female heir ; *a fortiori* indeed, because a lady did suit and service by proxy, and her marriage brought to the fief the person to whom the overlord had to look for vassalage. “ The husband of the *eldest* dochter sall make homage to the overlord for all *the heritage*, and the *after borne dochters, or their husbands*, are obliessed

to doe service to their overlord, for the tenement, *be the hand of the eldest dochter, or of her husband.*”*

Lord Hailes also observes, “ During the nonage of the female heir, the sovereign held possession by right of ward, and as soon as she was marriageable the sovereign provided a husband for her.†

The following feudal customs in regard to this matter must also be noted. 1. The ward of a female heiress who was a Crown vassal determined by her marriage. 2. If she married during her minority, no *relief duty* was due to her sovereign, but not so if she married after majority. “ Ane woman being ane heretrix to anie man, quhither she be of lawfull age or within age, she is in the warde and custody of her overlord, ay and quhill (until) she be married with his consent ; gif she, *being of les age*, falls in the warde of her overlord, and *within the samine age is married with his consent*, her land sall be *frie and quite fra anie relieve* induring her lifetime, and her husband’s ; and *gif she is of perfite age*, and nevertheles remains in the warde of her overlord until she be married, nevertheles the husband *before the compleiting of the marriage sall pay the releive.*”†

We may now turn to the *maritagium* of Elizabeth Menteith. It is a Latin deed, under the Great Seal and sign manual of James II. entitled Letters of Concession of the *Maritagium* of Elizabeth de Menteith. It bears, “ that James, by the grace of God, King of Scots, &c. gives and grants to his beloved servitor John Naper, son and heir-apparent of Alexander Naper of Merchamstoune, for the cordial affection which his Majesty bears towards him, the *maritagium* of Elizabeth de Menteth,

* Reg. Majest. 2. 29. *Skene*.

† Sutherland Case.

† Reg. Majest. 2. 70.

daughter of the late Murdoch de Menteth, and sister and one of the heirs of the late Patrick de Menteth of Rusk, accruing to the King (*nobis spectans*) by the decease of the said late Patrick, with all the lands, &c. belonging to the *maritagium* of the said Elizabeth ; prohibiting all interference whatever contrary to this concession of marriage, under all the pains and penalties ; given under the Great Seal at Stirling, 26th March (day after New Year's day) 1455, twentieth year of the reign, and signed JAMES R.*

This concession to John Napier cannot be viewed in the light of a mere pecuniary gift of the *prospective* marriage fine of an infant or child ; but must have been granted in reference to a marriage in immediate contemplation between the parties. It is unquestionable that a marriage actually took place between them about the time ; and this must be observed, that there is no gift of the ward to John Napier, which, according to the practice in such gifts, would have been joined with the *maritagium*, had this been merely a pecuniary be-

* "*Jacobus, &c. Sciatis nos dedimus et concessimus dilecto servitori nostri Johanni Napar, filio et heredi apparenti Alexandri Napare de Merchamstoune, pro cordiali affectione quam gerimus erga eundem, maritagium Elizabeth de Menteth, filie quondam Murdaci de Menteth, ac sororis et unius heredum quondam Patricii de Menteth de Rusk, nobis spectans per decassum ejusdem Patricii, cum terris redditibus, possessionibus, &c. ad ipsius Elizabeth maritagium spectantibus, &c. Datum sub magno sigillo nostro apud Strivelin, vicesimo sexto die mensis Martii anno Domini millesimo quodringentesimo quinquagesimo quinto, et regni nostro vicesimo.*

James R.

fourteen years complete until the month of February 1455, being the end of the same year at the beginning of which her sister Elizabeth was given in marriage to John Napier. In illustration of this document, which hitherto has not been considered to cast any light upon the matter, it is also necessary to premise a few remarks in reference to the ancient feudal customs.

1. There were various periods of life legally distinguished in reference to patrimonial rights, &c. as the following passage will serve to illustrate. "The *first age* is of 7 zeiris, during the quhilk the bairn is in powar and keiping of his father and mother. The *second age*, in males, is unto the age of 14 zeiris, and in *females* unto the age of 12 zeiris, efter the quhilk time it is leasum to *contract marriage*. The *third age* is unto the time that an heir *may enter to his landis*, quhilk is divers be ressoun of divers kinds of airis; for ane *air-male* of ward landis is of perfeit age to enter to his landis quhen he is of 21 compleit; ane *heretrix* or heir-female, of ward landis, is of perfeit age (to enter her lands) quhen scho is 14 zeiris auld compleit. Ane burges air is of lauchful age quhen he is 14 zeiris compleit, or quhen he can perfectlietell and nombre siller, and knaw the evil money by the gude, and discretelie do his fatheris business."*

All the authorities concur in the point, that an heiress in ward lands was not of age to enter her heritage by service and seisin until she had completed her *fourteenth* year.

2. The *non-entry* duty was that casualty which was due to the sovereign when the *ward* had determined, and the heir, or heiress, was of perfect age to enter the ward lands, and yet failed to do so. Consequently in

* President Balfour's Practicks, p. 227.

the case of an heiress the non-entry duty fell to be reckoned against her only when she attained the full age of fourteen years, previous to which it was not exigible, she being in ward. " Gif ane air of landis be of lauchful age, and *thairfoir* havand powar to enter to his landis, lyis out unenterit to the samin, the landis are in non-entries all the time and space that he lyis out unenterit, and *nicht have enterit* thairto; *propter negligentiam heredis non recuperantis jus suum.*"*

3. In order to protect the superior in his casualty of non-entry, it was incumbent on the jury of inquest to retour precisely the non-entry years of the lands. " The persounis of inquest committis ignorant errour, not retourand justlie the space of zeiris or termis be the quhilk the landis hes bene in non-entres sen the deceis of the last heritabill possessour thair of; as gif thay deliver that the landis wer in the superior's handis, be ressoun foirsaid, be the space of four zeiris and three monethis befor the dait of the said retour, and in veritie the last possessour died four zeiris and nyne monthis befor the serving of the said breve and making of the said retour, and so the saidis persounis defraudit the superior of ane term of non-entres above the four zeires, of the saidis landis, quhilk term nicht not be comprehendit in the saidis three monethis."†

4. But it might easily happen that the lands were not in non-entry during the whole period between the date of the retour and the death of the last possessour; for the heir, at the time of his predecessor's death, might have been under age to enter, in which case the lands would be in the hands of the superior during that part of the period, in consequence not of non-entry, but of

* Balfour, p. 257.

† Ibid. p. 428.

ward. Hence it was necessary also to distinguish, in the retour, between the time of ward and the time of non-entry. "The persounis passand upon the service of ane breve of inquest committis manifest and wilful errour, deliverand and retourand that the landis wer in the superior's handis in default of the narrest air not persew and his richt of the samin, (*i. e. nonentry*) gif of veritie the saidis landis wer in his handis in default of the lauchful age of the richteous air," &c. (*i. e. ward.*) Again, "The persounis of inquest committis ignorant errour gif thay retour and deliver that the landis ar in the superior's handis be ressoun of ward and nonentres, be the space of certain termis and zeiris, and makis not special distinction betwix the time or zeiris in the quhilk thay wer in his handis, *be ressoun of non-entres*, and the time or zeiris in the quhilk thay wer in his handis *be ressoun of ward.*"*

5. In the case of coheiresses in ward lands, however, when the ward of the eldest determined by her marriage, or otherwise, no part of the fief, not even the portion of the younger sister, though still under age, remained in the King's hands by reason of the feudal incident of ward; for the husband, or the proxy of the elder sister fulfilled the vassalage of the fief. Mr Erskine observes, "In coheiresses the ward determined when the *eldest* attained the age of fourteen, for as the right of superiority was a *jus individuum* belonging solely to the eldest, the casualties due by two or more vassals ought also to be regulated by the age of the eldest. Besides that heirs-portioners were heirs *pro indiviso*, each of them had a property in every *gleba terræ*, and, therefore, when the *eldest* came to be fourteen, the supe-

* Balfour, p. 431.

rior had a vassal fit for marriage, who was truly vassal in every inch of ground in the ward-fee." Hence, in such a-case, the lands of the younger sister,—although she could, under no circumstances, become liable for non-entry duties until full fourteen years of age, when she was first capable of being seized,—were not in ward of the superior after the marriage of her elder sister.

We may now turn to the retour of Agnes Menteith. The Latin original bears, that " This inquisition was taken at Perth before William of Murray, sheriff of the same, upon the 28th day of the month of April 1456 ;" being the second month of that year. The date alone is sufficient to raise a strong presumption of the primogeniture of her sister Elizabeth, when contrasted with the gift of *maritagium*, which is dated more than a twelve-month before this retour of Agnes. Upon any other theory, we must suppose what was most unlikely to have happened in those times, namely, that the *eldest* coheiress of this ward-fee did not feudally enter her lands for more than twelve months after her *younger* sister had been given in marriage by the sovereign ; and this violent supposition must also be made in face of the fact, that, in the record of relief duties, Elizabeth is actually recorded as the leading coheiress !

But from this retour we may gather *precisely* when Agnes completed her fourteenth year. It goes on to say, after enumerating the names of those composing the jury, " that, being sworn, they declare that the late Patrick of Menteth, brother of Agnes of Menteth, the bearer of these presents, died last vest and seized as of fee, at the peace and faith of our Lord the King, of the lands of Thom and Lanyrkin, and of Rusky, with their pertinents, lying in the Lordship of Menteth, in the said county, and that the said Agnes is one of the legitimate

and nearest heirs of the said late Patrick, her brother, in the said lands and their pertinents, and that she is of lawful age, &c. and that the said lands are in the hands of our said Lord the King, through the death of the said late Patrick, her brother, *for the space of ten weeks*.* In testimony of which the seals of the jury are appended.

A hasty perusal of this retour might give the impression that Patrick Menteith had died just *ten weeks* before its date. But the gift of *maritagium* arose out of the death of Patrick also, and that deed is dated *eleven months* before the retour. Hence it is plain that the ten weeks mentioned must refer to some other period than the event of Patrick's demise, and, after the feudal illustrations afforded above, it is not difficult to find the true interpretation. The lands were not in the hands of the sovereign by reason of *ward*, otherwise the whole period since the death of Patrick would have been mentioned. It must have been by reason of the *nonentry* of Agnes Menteith; and the ten weeks, therefore, mark the period when that young lady *completed her fourteenth year*, and was qualified to enter her lands. If it be considered a puzzle, that, for the rest of the period since Patrick's death, she must have been in ward, which is not mentioned in the retour, the reply is, that, by the marriage of Elizabeth, the ward of the whole fee had determined, and the ward lands of Agnes, therefore, only fell into the sovereign's hands in consequence of the *non-entry* of that young lady when she became of age to enter.

To fix the age of Agnes Menteith is of great importance in this question, and it is hoped that there is no

* "*Et quod sunt in manibus dicti domini nostri Regis Domini superioris earund. legitime per seipsum, per mortem dicti quond. patr. fratris sui per spacium decem septimanas. In cujus rei testimonium sigilla,*" &c.—Gleneagles Papers.

fallacy in the above deduction. It may require some attention to the terms of her retour, and the feudal customs, to detect that result, but the inference does not appear to be strained. It is impossible to argue, that the *ten weeks* of the sovereign's feudal possession indicated the whole period since Patrick's death, for it is unquestionably proved that he was dead before the 26th of March (day after New Year's day) 1455. It could not, therefore, have been the period of ward. If not the period of ward, it must have been the period of nonentry, commencing when the person retoured had completed the fourteenth year. Agnes Menteith, therefore, was precisely fourteen years of age on the 11th of February 1455, that being ten weeks before the 28th of April 1456, the date of her retour. Now it is *ten months earlier*, namely, 26th March 1455, that the deed of Elizabeth Menteith's *maritagium* is dated, and, as already observed, this of itself affords very substantial evidence of the primogeniture of Elizabeth.

But evidence, yet more conclusive, can be extracted from this comparison of the dates of the records connected with the circumstance of these young heiresses becoming of age and seized in their property. The date being given when Agnes Menteith had completed her fourteenth year, and the dates being given within which Elizabeth Menteith took out her seisin, it can be demonstrated that the theory for Gleneagles,—namely, that Elizabeth was the second, and not the first born daughter,—*cannot be true*. For let that theory be adopted. Agnes Menteith completed her fourteenth year on or about the 11th of February 1455. Elizabeth was (say) ten months younger; that is, she had completed her fourteenth year only in December 1456. If there was a longer interval than ten months between the births of

the sisters, as is most likely, Elizabeth would have been of age to enter her lands at some corresponding period of a still later date. But this cannot be. Elizabeth Menteith *must* have been at least fourteen years old complete between the 26th July 1454 and the 21st October 1456, for within those dates she relieved her lands, and took out her precept of seisin.

On the other hand, the theory, that she was the elder sister, harmonizes perfectly with all the facts. The *maritimum* of Elizabeth is dated on the second day of the year 1455; she had probably relieved her lands in the year 1454, and was then past fourteen. Agnes Menteith's retour is dated in the second month of the year 1456, just ten weeks after she had completed her fourteenth year, and, according to the memorial for Gleneagles, she was not married until the year 1460.

Assuming that there is no fallacy in the above test,—and, though it occurred to me some years ago, I have never been able to detect the fallacy,—it demonstrates that Elizabeth Menteith could not have been the daughter of a birth subsequent to Agnes, and so destroys that pretension of Gleneagles.

This test, however, is not exclusive of the theory that these young ladies were twins,—though that has never been surmised, and certainly is not to be assumed without a vestige of proof. But suppose it were so, this would by no means bring the above discussion to what might be termed *a drawn game*. The right of primogeniture does not vanish in the case of twins, and the particular sequence of the names of the coheiresses of Rusky in the record of relief duties, with the fact of possessing the messuages, would be overwhelming evidence in support of Elizabeth Menteith's claim to be considered the eldest or leading twin.

If the author of the Tracts, or any other antiquary of equal zeal and information, shall completely refute this history, the author of the Memoirs of Merchiston will most cheerfully confess the error of that “Genealogical scheme showing the Philosopher’s *Representation* of Duncan VIII. Earl of Levenax” which was engraved for his work. He cannot help thinking, however,—and will be consoled by, and take credit for the result—that a flight above the elucidation the subject has now received, must determine in some quarter the right to the honours of this ancient and interesting Comitatus,—the Arcadia of Scotland—the romantic land where

Endrick, in wildly lyric mood,
 Displays her laurel crown,
 And tells how, musing by her flood,
 Sage Napier earned renown ;
 That oft she paus’d, to mark at midnight hour,
 The pale lamp glimmering in his ivy’d tower.*

RICHARDSON.

* The Endrick issues from Lochlomond, flowing, through Strath-endrick, close to Gartness an ancient place belonging to the philosopher, who frequently pursued his studies in that beautiful retreat. If the history I have now recorded be accurate, he was *de jure* an Earl of that ancient race whom Sir David Lindesay of the mount quaintly calls “the Erles of Lanox of auld”—and in that right he is represented by the present Lord Napier.



VINDICATION
OF THE
ANTIQUITIES OF MERCHISTON AND THIRLESTANE,
IN REPLY TO
MR RIDDELL'S
"OBSERVATIONS UPON THE REPRESENTATION OF THE BUSKY
AND LENNOX FAMILIES, AND OTHER POINTS IN MR NAPIER'S
MEMOIRS OF MERCHISTON."



VINDICATION, &c.

I.

REPLY TO MR RIDDELL'S INSINUATION THAT THE EVIDENCE
FOR THE ANCIENT ARMORIAL SEALS OF MERCHISTON MAY
NOT BE GENUINE—ANTIQUITIES OF RACES OF NAPIER DIS-
TINCT FROM MERCHISTON.

UPON the memorable occasion when Captain Charles Napier, Count Cape St Vincent, took the fleet of Portugal, the legend, that his family surname was derived from a warlike ancestor having been complimented by a King of Scotland with an appellation equivalent to *non-pareil*, appeared in the London newspapers. That story had been put on record by some heraldic writers, but the history of its first publication was unknown. The author of the Memoirs of Merchiston happening to trace the original promulgation of it into connection with a characteristic scene that occurred in the presence chamber of James VI., considered the anecdote as fairly belonging to the antiquities of the domestic history he was illustrating. The legend might indeed, as the Quarterly Review somewhat testily observed, be but an old woman's tale, yet it was better once for all to give the version as now published in the Memoirs, than to leave its vague statement to the Globe or Courier.

But while laying no stress upon the more fanciful

dency, and that these bearings were not otherwise explained or accounted for, this adminicle (for it is no more,) gave a value to the family tradition, which even the apocryphal seeming legend of the change of surname could not destroy.*

But this evidence had been lost in the errors of our best heraldic writers. Sir George Mackenzie and Mr Nisbet understood the bearings in question to indicate a Lennox descent, and both those celebrated authors recorded, as a fact, that they were first assumed by John Napier of Merchiston, to the oblivion of his paternal coat, upon his marriage with the heiress of Lennox

* Father Hay, in his manuscript memoirs, mentions a charter dated 1150 to Sir Thomas de la Haye de Locharward; he adds, that he had married, " Montfiguett, heretrix of Locharwart, and of this marriage had Sir William, who succeeded him, and *Margaret married to Donald, sone to the Erle of Lennox, of whom is come the family of Naper.*"—MS. *Advocates' Library*. It is to be remarked that the writer who here strengthens the Merchiston legend by recording a fact *not contained in the family version* of it, had, a few pages before, refuted the legend of his own family surname (Hay), which he treats as a fable. Father Hay inspected charters which are not now extant, and the above, which I had not seen when compiling the *Memoirs of Merchiston*, is at least worthy of notice.

Sir Archibald (afterwards Lord Napier) in the year 1625 declared in writing, to the Garter of England, that the undoubted tradition from father to son in his family, that it was a male cadet of Lennox, was then immemorial. But he does not found upon, nor attribute this tradition to, the armorial bearings; indeed, if those bearings had some other origin than a Lennox descent, it is difficult to understand why they should not rather have transmitted the true tradition than a false one. The Merchiston seals are quoted, not (as the *Quarterly Review* supposed) that similar arms infallibly indicate the same descent, but because the seal of a Napier of Merchiston who must have been born about 1370, being found to display *Lennox with a mark of cadency*, was curiously corroborative of the family tradition. So the interesting case of Sir Richard Scrope and Sir Robert Grosvenor, instanced by that journal, is not in point.

about the year 1455. Now it happened that the respective seals of John's father and grandfather, before the date of that marriage, could be produced, and they carried the very same insignia, said to be derived by John from his Lady.

Mr Riddell at one time entertained the theory of these authors. And even now he will not yield a gracious or unqualified assent to the most direct and unequivocal refutation their theory could receive. "Nesbit and Sir George Mackenzie (says he) account for the Napiers of Merchiston carrying the Lennox arms by the marriage of John Napier with Elizabeth Menteith, who they think disused his own arms on the occasion, and assumed those that accrued to her as a Lennox co-heir. This of course is redargued by the evidence of *the seal—holding it to be genuine* ; had it not been for the latter the thing would have been extremely natural," &c.

Our learned antiquary had not well weighed the effect of this vague insinuation. The person who first observed the seal that refutes Sir George Mackenzie and others, was the late Francis Lord Napier, in compiling the genealogy of his family, published in Wood's Peerage, where the refutation is recorded. The seal and relative deed had been always in his charter-chest with the other parchments; if it be *not held to be genuine*, it must be held to have been *concocted*, and for the special purpose of supporting a heraldic theory comparatively of no importance, which imputation would rest with that nobleman, or some one of his equally honourable ancestors,—a *reductio ad absurdum* that cannot have occurred to Mr Riddell, or it would probably have made him ashamed of the sceptical expression he has published. Long before the publication of the Memoirs of Merchiston, the author had heard the very same ex-

pression drop from the author of the Tracts, and though he considered the dubiety as an accidental shadow passing across a cautious mind, and certainly never expected to see it in print, he determined not to leave the point unfortified, and was so fortunate as to obtain *another seal* of the family distinct from that of John of Rusky, and the one doubted. This rendered the proof conclusive, for it was the seal of John's father, Alexander Napier, (comptroller of the household, and designed of Philde,) and carried precisely the Lennox bearings of the seal Lord Napier observed, which belonged to Alexander Napier of Merchiston, (designed burgess of Edinburgh) John's grandfather. Moreover, it was discovered, not in the family charter-chest, but among the manuscripts of the Advocates' Library. The following is a tolerably accurate delineation of the three seals, numbered chronologically in reference to the owners.



Now all these seals are engraved and explained in the memoirs of Merchiston, though the author of the Tracts is silent upon that fact, and takes no more notice of the intermediate seal,—affording so unanswerable a reply to his scepticism, ridiculous as that is,—than if it had not been produced. No work, whatever may be its research and accuracy, is independent of a fair consideration of the proofs and materials that compose it. Without attempting further to *refute* the doubt in question, I must take the liberty to amend the reading of it thus ; “ This

of course is redargued by the evidence of the *two seals*, holding *both or either of them* to be genuine.”*

There are several other ancient races of Napier besides Merchiston, none of which carry the Lennox shield, though some of them were for centuries distinguished vassals of the Lennox, while Merchiston was planted in the Lothians. The theory of *vassalage* fails, therefore, as an explanation of the Lennox arms of the latter. Nor have I been able to trace Merchiston into a cadency with any of the other families of the name. Mr Riddell has indeed asserted, “It is not unlikely that the first Alexander Napier of Merchiston was a younger son of some of the feudal stocks of Napier, the most ancient of whom was the family of Kilmahew ; Mr Thomas Crawford, Professor of Mathematics in the College of Edinburgh, an antiquarian of some note, and who lived in the reign of

* See Memoirs of Merchiston as to these seals.

Mr Riddell observes, “Mr Napier supposes that the first Alexander died in 1454, but there is no proper evidence of the fact.” As the fact is of no importance, except in the eyes of such minute writers as the author of the Tracts, the proofs were not given. There is no question that the first two Napiers of Merchiston were Alexanders, for in a deed dated 6th September 1432, Alexander junior is designed son and heir of Alexander senior. The latter was only designed of Merchiston, and burghess of Edinburgh. The former, after the gift of Philde to him in 1449, is designed of Philde, and sometimes comptroller, down to 22d July 1454 inclusive. After that date, he is invariably designed of Merchiston, and *militem*, and sometimes master of household. In the deed to which seal 1. is attached, dated a few days before the close of 1453, Alexander is simply styled “burghess of Edinburgh.” Hence it is likely that the first Alexander died at an advanced age, about the year 1454. Mr Riddell objects to the supposition that a man survived to 1454 who was Provost in 1403! But the *second seal corroborates the first*, even if they both belonged to the *same* Alexander. Seal 2, is impressed on a paper obligation dated April 1452, by “Alexander Napare of Philde” to James II. Seal 3, is John of Rusky’s in 1482.

Charles I., says, that the family of Merchiston before the time of their elevation to the peerage, impaled the arms of *Kilmahew* with Lennox, which, according to Nesbit and Mackenzie, they bore as descended from the Lennox coheir. Sir David Lindsay also, in his blazoning of their arms, while he inserts the Lennox insignia, leaves two quarters vacant, evidently for the reception of others, which rather tends to corroborate Crawford's account.*

But these quotations could only have been made for the sake of contradiction. In the Memoirs of Merchiston there is an engraved plate of the seals of that family taken from the family papers, and arranged in chronological order, from Alexander the first of Merchiston to the Inventor of Logarithms inclusive. Every one of these seals carry a shield with precisely the same bearings, namely, the engrailed saltier and roses, without a vestige of quartering. The seal of the philosopher's son is also engraved beneath his portrait in the work, the seal of his son, the second Lord, is in the charter-chest, and both carry the same as above. Of course these *nine* successive seals, *holding them to be genuine*, refute both Mr Crawford, who had not the benefit of the proof, and Mr Riddell, who had; and when the latter ingenious antiquary, in support of his repetition of Crawford's error, quotes Sir David Lindsay,—who, in his manuscript *adversaria*, places the Merchiston coat quarterly, but with the hypothetical quarters *blank*,—we may well say of the author of the Tracts what he has said of Crawford the peerage writer, “our genealogists are odd logicians.”†

Upon the supposition that the surname of Napier

* Tracts, p. 125.

† Ibid. p. 131.

of Merchiston was originally that of the old Earls of Lennox, it is not necessary to adopt the *canting* story of its change to Napier, which may be a fancy subsequently superinduced upon a true tradition of lineage. An office in the royal household might have effected the alteration, and, moreover, distinct families may upon other occasions have in like manner acquired the same surname. * The following antiquarian particulars regarding the name, both in England and Scotland, were collected some years ago in compiling the Memoirs of Merchiston. They not only tend to show how distinct the race of Merchiston appears to be from all the other ancient races of the same surname, but in themselves possess more or less of antiquarian interest.

Of the old English Naperers, being the earliest Napiers on record.

Centuries before the English and Irish Napiers had branched from the stock of Merchiston, and prior to the date generally attributed to the Lennox tradition of that family, some of a similar surname existed who were freeholders and tenants in Essex, and other counties of England. From these I am not aware that any family extant can, or ever pretended to deduce an origin; nor had their appellation any claims to the reputed derivation of the peerless ancestor of Merchiston. The voluminous records in the tower of London present these forgotten worthies, *rari nantes in gurgite vasto*. I note them as affording the most ancient examples of the name, and a theory of its derivation hitherto unobserved.*

* This was written long before Mr Riddell's Tracts, who I see

Previous to the fifth year of the reign of King Stephen, (1140,) there existed an *Oinus Naparius*, or Oinus of the Napery; for of that date a notice of his wife occurs in the Exchequer expences. *Radnessus le Naper* of Waltham, is also mentioned in the fourteenth year of the reign of Henry II. (1168) In the English records, printed from the original in the Tower by command of George III., in pursuance of an address of the House of Commons, there are to be met with many notices of Napiers in various counties. John is the most common Christian name occurring among them. In the *Calend. Rot.* the following entry is met with "*Johannes le Naper, venator regis, Haveringe maner, 18 acr. messuage, Essex.*" This occurs under 44th Henry III. (1239) and proves a John Napier to have been huntsman to the King of that date. Havering Liberty, rich in romantic legends, was in olden times a favourite resort of the Kings of England, who had a hunting seat there,* and probably the "*venator regis*" held less of a sinecure than the master of the buckhounds now. *Walter de la Naperye* occurs in the 53d year of the same reign. This last modification of the name leads us to a derivation sufficiently plausible.

(page 132) deduces the same theory from his own observance of "*Menigarus le Napier*" appointed, as appears from the *Test. de Nevil*, to the office "*de Naperie*," sometime between 1154 and 1189, by Henry II. But our learned antiquary inclines to a theory which is entirely his own; he thinks that very possibly the surname is taken from the feats of an individual, and says that the *venator regis* "probably was as peerless in his way, and as good a *knapper* or *nabber* (to use a Scottish term) of game, as Donald the *Naepier* was of men." This savours of that fine old college of antiquities, the *Hic-Scule*.

* A saint retired there to say his prayers, but the nightingales disturbed him to such a degree that he exorcised the place, as if the birds had been devils, and drove them away.

The Napery was an office in the royal household.* It is well known to antiquaries that such offices afforded a fertile source of surnames, which became, at a very early period, purely nominal. In the records of the reign of King John, and the 9th year (1209,) there is a very distinct notice of the office in question held by one whose own surname had not merged in his employment. *Wilhelmus Torel* is charged with a debt of forty marks for

* "*Naparia, seu Napparia, officium in aula regia, adde. Hinc servant de Naperie in ordinat. domus Joan V. Ducis Brit. An. 1403.* Du Cange.

When investigating this theory of the name, I received the following information, dated 7th September 1832, from Sir William Woods, (*Clarenceux*) through the late Lord Napier. "At the coronation of King Henry V.'s Queen, (Catherine of France,) the Lord Grey of Ruthin was Naperer (1420.) At the coronation of Queen Eleanor, wife of King Henry III. who died 1277, it appears there was a claim made by two persons to the office, and the King appointed one of them, Henry de Hasting, to execute it." I was also kindly favoured from the same quarter with a full extract of two claims rejected at the coronation of George IV. which are curious. The first is that of "The Right Honourable William Francis Henry Baron Petre of Writtle, in the county of Essex." He claimed in right of Asheley, in the county of Norfolk, "the office of the Napery on the day of his Majesty's coronation, and to have all the tablecloths and napkins for his fees." Part of the narrative is, "That your petitioner's ancestors and predecessors being persons professing the Roman Catholic religion, and as such by law prohibited from coming into the royal presence, or within the precincts of his Majesty's Court, have omitted to claim," &c. The commissioners decided that this ancient tenure of Asheley had been extinguished by falling into the hands of one of the King's ancestors, who had given the manor out again on a different tenure. The other claimant is "Jane Green of Torrells Hall, in Little Thurrock, in the county of Essex, widow." She claimed in virtue of her liferent of Thurrock Torrells, "by tenure of Grand Sergeanty, that is to say, by the service of being the King's Naperer on the day of his Majesty's coronation," &c., but failed in her proof of the tenure.

officio Naperiæ regis. He belonged to the county of Essex, where thirty years afterwards we find John Naper, the King's huntsman, Lord of a Manor. Throughout succeeding reigns the name frequently occurs in the English records, and seems as obvious in its derivation as others with which it is in immediate conjunction, such as "Galfried *le Gardiner*," "Alex. *le Peyntour*," and "Johan *le Naper*." There are, besides, William, Thomas, Jordan, and Luke Napers mentioned in the reign of Edward I.*

Of the Napiers of Kilmahew, the earliest on record in Scotland.

The first appearance of the name of Napier in Scotland is as vassals of the old Earls of Lennox, and barons in that district, though we shall find that there is a remarkable disconnection between this circumstance and the Lennox tradition of the Merchiston Napiers.

In the chartulary of Lennox there are frequent notices of a John Naper, as one of the witnesses to the charters of Malcolm Fourth Earl of Lennox. These charters have no dates, but from other tests may be dated before the end of the thirteenth century. This is obviously the same John Naper who is mentioned in that degrading document, commonly called the *Ragman roll*, wherein the names of the Scottish barons are recorded who swore fealty to Edward I. in the year 1296. He is there called "Johan le Naper del Comte de Dunbretan." So far as I know, this is the earliest Napier

* See also *Rotuli Litterarum Clausarum*, in the Tower, (printed by command of his present Majesty,) for various notices of one *Robertus Naparius* in the reign of King John, who is clearly of the *Napery*.

upon record in Scotland, and it is interesting to find that not only is he a distinguished and historical character, but that a long line of his descendants can be very distinctly traced. He was one of the gallant but unfortunate defenders of the Castle of Stirling, when reduced to extremity, in the year 1304, by King Edward in person. Before the walls of the last tower in Scotland which opposed his march, that ruthless conqueror seems to have acquired a momentary respect for patriotic valour, which it would have been well for his fame had he extended to Sir William Wallace. He spared the lives of the few obstinate warriors who survived the reduction of Stirling Castle, and issued an express command that the gallant prisoners, among whom was John le Naper, should be spared the pain and indignity of iron fetters.

The parentage of this worthy is unknown, though it is not impossible that he sprung from the Essex hero of the buck-hounds, whom the enchantments of a long chase, or some milk-white doe, may have seduced into rugged Scotland from the groves and nightingales for which Havering Liberty was so famed. There is no doubt, however, that he was Napier of *Kilmahew* in the Lennox, and I have been able to trace the descent of that family (though it is now extinct, and their papers lost) from him, down to modern times, through chartularies and other authentic records. They were originally close allies and vassals of the Earls of Lennox, and became of baronial rank in that district of Scotland, where the family remained until its extinction in the last century. The details it is unnecessary to give, as none of these barons were particularly distinguished. It is important to observe, however, that two charter seals of successive Napiers of Kilmahew are extant, attached

to deeds dated in 1473 and 1490, and in both instances the shield carries *a bend charged with three crescents*. This proves that Kilmahew, a family that rose upon its Lennox vassalage, and *never quitted* the district, did not assume a single bearing in consequence; and so the theory fails that the Lennox arms of Merchiston, a family having *no connection* with the district until a subsequent period, are arms of vassalage to Lennox, derived through cadency from Kilmahew.*

Of the Napiers of Wrychtishousis.

Another remarkable confirmation of the idea that Merchiston was not a branch of Kilmahew, or obtained the Lennox armorial bearings through such cadency, is to be found in the history of the Napiers of "the Wrychtishousis," a family which is nowhere genealogically recorded. I have also succeeded, however, in tracing to modern times this ancient race.

Upon the site of Gillespie's Hospital, and within a quarter of a mile of Merchiston, once stood another lofty and massy tower of very ancient date, around which clustered, in various forms of Scottish architecture, intricate ranges of buildings, and peaked turrets, which had been added in different ages to increase the accommodation afforded by the primitive tower. The general effect is said, by those who still remember it with regret, to have been singularly picturesque, especially when viewed from the Borough-muir in sunset. One remarkable feature of this interesting fabric was the heraldic carvings in stone, which at various times

* The Quarterly Review observes, "The Merchiston Napiers may have been originally, *as some other families of the name certainly were*, vassals of the ancient Earls of Lennox," &c.

had been bestowed upon its walls literally crowded with armorial bearings. These had obviously been for the purpose of perpetuating the memory of successive alliances of the owners of this castle, and their accuracy is proved by other authentic records.

The property was unfortunately acquired about the year 1800 by the Managers of the fund for Mr Gillespie's mortification, who deliberately and tastelessly removed what time itself had spared. This, however, was not effected without meeting with a spirited remonstrance. In the Edinburgh Magazine for July 1800, a writer, signing himself *Cadmon*, addressed two letters to the public "on the Demolition of Wrytishouse near Edinburgh," taking for his motto

" Vain transitory splendour ! could not all
Reprieve the noble mansion from its fall ?"

This appeal had not the effect of saving the building, but has been the means of preserving a very interesting notice of its antiquities which this writer examined *con amore*. He found a date, carved above a window, so old as 1376. It is remarkable, however, that even this enthusiastic champion of the Wrychtishousis did not discover to what race it had chiefly belonged. If, amid all that flesh is heir to, *Cadmon* have himself survived the chances and changes of more than thirty years, it may gratify him to find that the object of his solicitude is even yet remembered, its antiquities explored, and its ancient proprietors recorded.

From at least 1390 to 1680, this venerable pile, with some goodly acres attached to it, belonged to a race of Napiers whom I have succeeded in tracing through all that time as a separate family from Merchiston, and without a symptom of cadency between them. Douglas in his Peerage records, but without proof, as the lineal

male ancestor of Merchiston, a William de Naper, who got a charter under the Great Seal "*Willielmo Naper, filio quondam Johannis Naper,*" of the lands of Easter Garmylton, in the constabulary of Haddington, which were resigned by William Naper, son of John Naper of Garmylton, dated at Methfen 4th February, 6, Robert II. 1376-7.* Mr Wood also notes that he was governor of the Castle of Edinburgh, as in a charter to Alan Launder "*Willielmus de Naper, custos castri de Edinburgh*" is a witness, 1401. Whether the assumption be well founded that William, son of John Naper in East Lothian, is the same who was governor of the castle in 1401, I have not had the means of ascertaining. But I find a record of him of Edinburgh Castle at an earlier period than the above, and can nearly identify him with the founder of the family of Wrychtishousis.

For fourteen years, commencing with 1390, William Naper is each year invariably mentioned in the Great Chamberlain Rolls of Scotland, as the colleague in office of a well known and wealthy person of the period, Adam Forrester of Corstorphine. They are designed in these royal accounts, "*Custumarii burghi,*" that is, they farmed by royal grant the customs of Edinburgh, an important source of the revenue, and it also appears that they exercised their office by means of deputies allowed by the terms of their charter. Precisely during the same period and in each year, namely, from 1390 to 1404, William Naper is also mentioned as *constabularis* (sometimes *custos*) *castri Edinburghi.*" After that period the name disappears from both offices at the same time. There seems no room to doubt that this is one

* Mr Riddell (p. 130) makes some pointed allusions to the Garleton charters comprehended in an inventory of the Wemyss charter-chest. We take the liberty to refer that learned gentleman to Wood's Peerage and the printed portion of the Great Seal record.

and the same person, which is curiously confirmed by the fact, that a connecting link can be found between Wrychtishousis and the *custumarius burgi* on the one hand, and, on the other, between the *constabularis castri*, and the same property.

1. In Robertson's index of charters, there is one by Robert III. in the year 1390, to "William Naper of the lands of Wrychtishousis, ane part thereof, by resignation of Adam Forrester," &c. This most probably was a transaction between the two *custumarii burgi* of the very period.

2. By old charters of the Wrychtishousis which I have examined, both in the Register-House and private repositories, it appears that the tenure by which these Napiers held that property was the payment to the King of a silver penny, upon the *Castle-hill* of Edinburgh. This may have been connected with some particular event, such as the following. In the year 1400, the Castle of Edinburgh was beleagured by Henry IV. at the head of the whole military force of England. But the place baffled all his efforts, and had the important effect of redeeming Scotland from total subjection. Upon this memorable occasion Archibald Earl of Douglas, and his royal son-in-law the unfortunate Duke of Rothsay, threw themselves into this stronghold (of which William Naper was then constable, as he had been for many years) and so stoutly kept at bay the most insolent army that ever entered Scotland, as to compel the King of England to raise the siege. There were some knightly and romantic proposals at this warlike pageant round old Dunedin. The Prince sent a personal challenge to King Henry, and urged a decision of the contest by single combat, or its classical determination by a limited number of nobles selected from each side. The

Duke of Albany, whose army hovered at some distance from the English host, announced by his herald that if the King of England would remain six days longer under the walls of the castle, he, Albany, would give him battle. This proposal better suited the experience and temper of Henry, who gave his own mantle and a chain of gold to the Scotch herald in token of eager acquiescence. But Albany only meant to mock him, and the monarch was at length constrained to depart from this impregnable rock, the "sad and solitary place without verdure," as it had been described by the daughter of Henry III., to meet Owen Glendower at home. It is interesting to compare with this historical event an item in the Great Chamberlain's accounts, which occurs very soon after, and most probably regards the dilapidation occasioned by the siege. It is to this effect, in Latin, "And for repairing the gates of the Castle of Edinburgh, and for expences incurred about its drawbridge, according to the account rendered upon oath by William Naper, constable of the said castle, eleven pounds and sixpence."

Fourteen years services as constable, including so memorable a siege, may perhaps account for the silver link between the Wrychtishousis and the castle hill, and, upon the whole, it may be fairly presumed that the *custumarius burgi*, the *constabularis castri*, and the William Naper who got a crown charter of this property upon the resignation of Adam Forrester are all one and the same person.

Cadmon, in his second letter, observes, "I am of opinion, that persons well versed in the local heraldry of this part of Scotland might, from the armorial bearings, shields, crests, and a various insignia interwoven in different places with initial letters, determine the family

whose original mansion Wryteshouse has been, which seems to have been a matter of *perfect uncertainty* to all who have mentioned it in their writings." Yet I have been able to trace the family alliances by comparing with other records the carved stones still extant, some of which are built into the park walls and offices of Gillespie's Hospital; others were purchased by the late Lord Woodhouselee, and formed into an artificial ruin which still adorns Mr Tytler's lawn.

One of the most ancient of these stones appears to have no connection with the family of Napier. The shield carved upon it carries three crescents disposed upon the field, with a mark of difference in the centre. This might be a cadet of Seton. What connection, however, can be traced between the Wrychtishousis, and Seton? This led me to trace the history of the property upwards from Adam Forrester; and I find a charter under the Great Seal of Robert II. in the twelfth year of his reign (1383) to *Adam Forrester* two parts of the lands of Wrychtishousis,* near Edinburgh, by resignation of *Henry de Winton* and Amy Brown. Now it is a remarkable coincidence that *Alan de Wyntown* carried off *Margaret Seton, the heiress of Seton*, and married her,—a marriage that gave rise to a feud, causing more than a hundred ploughs to be laid aside from labour. Wyntoun records this in his chronicle as having happened in the year 1347;

* Maitland (Hist. of Edin. p. 507.) refutes the antiquarian opinion, that the village at the west end of Bruntsfield Links was called *Wrychts Houses* because the wrights dwelt there who were employed in cutting down and manufacturing the oaks that once grew on the Borough-muir. As that event occurred after the year 1508, the ancient charter quoted in the text so far confirms the refutation, but it also refutes Maitland's own theory, which is, that the village was so called because the *Laird of Wryte* had a house there.

A thousand thre hundyr fourty and seven
 Yheiris eftyr the byrth of God of Hewyn,
 Qwhen Willame of Murrawe wes lyand
 In Edynburchw Castell than dwelland,
 Dat yhere Alane of Wyntown
 Tuk the yhowng Lady Setown,
 And weddyt hyr than til hys wyf.

So Henry Wyntown, who resigned Wrychtishousis to Adam Forrester before the close of that century, may have been a cadet of that alliance, and it is *possible* that the stone in question was meant to commemorate that point in the history of the mansion.*



1. The armorial stone which refers to the most ancient date about the building connected with the Napers that I have discovered, is here represented, as its story is less equivocal. It is built over the well at Gillespie's Hospital, and is evidently very old, though surely not contemporary with the date carved upon it. The use of Arabic numerals in Scotland can

* This ingenious theory, it must be confessed, is one of those liable to be overturned by the plain fact of some provoking Edie Ochiltree, a controversialist yet more to be dreaded, in these matters, than the author of the Tracts.

scarcely be referred to a period so early, (a test genealogical antiquaries sometimes overlook,) and probably the stone is merely commemorative of an alliance proved by other records of the family then existing. Sir David Lindesay, in his heraldic manuscript, records the arms of Napier of Wrychtishoussis, "on a bend azure, a crescent betwixt two spur rowels;" which also agrees with the ancient seals of that family still extant. Mr Nesbit says, "the name of *Stirling* has always been in use to carry buckles variously situate, but more frequently on a bend, as now used." Hence the above impalement indicates the marriage of an A. Napier of Wrychtishoussis, to a J. Stirling, in 1399; and probably commemorates the marriage of the successor of the constable who acquired the lands in 1390.

2. I find an Alan Naper of Wrychtishoussis mentioned in the very ancient chartulary of St Giles, * as having lent his seal to Thomas Hogeson, in a charter dated at Leith 1st June 1451. This illustrates one of the armorial stones bearing date the previous year, as follows.



The arms here impaled with Napier are unquestionably those of *Rhind*, which fact corresponds with the lady's initials.

3. Their son, or at least successour, "Alexander Naper de Wrychtishouse," is one of the inquest in the re-

* The property of Maule of Panmure.

tour of Archibald Naper of Merchanston as heir to his father, dated 12th December 1488;* and he is also mentioned in the ancient protocol books of the city of Edinburgh, in the years 1494 and 1505.

4. From the same records of Edinburgh it appears that Alexander had been succeeded by Robert; for, of date 11th July 1523, Robert Naper of Wrychtishoussis, *Margaret Naper* his spouse, and Alexander Naper *their son*, are all mentioned in making up titles to burgage property. Another of the armorial stones, a delineation of which is here given, affords an interesting elucidation of this marriage.



These are the respective armorial bearings of Wrychtishoussis and Merchiston, impaled; and hence it appears that in the year of the battle of Flodden Field, the laird of the former had married a daughter of the latter. The heraldic distinction of the two families is here perfectly illustrated, thus affording another contradiction to the theory that Merchiston and Kilmahew were armorially identified. From the Merchiston genealogy it can be proved that John Napier and Elizabeth Menteith had a daughter Margaret, who must have been the above lady.

5. Their son Alexander is mentioned in the city re-

* Quoted in the Memoirs of Merchiston, p. 10, where by mistake it is called the retour as heir to his mother Elizabeth Menteith.

cords of date 5th December 1549, as clearing off annual-rents which had been contracted by his father Robert. His wife *Janet Udwart* is also mentioned in the same records.

6. In the record of deeds in the Register-House there is one dated 20th July 1592, by "William Nepare of Wrychtishoussis, merchant, burgess of Edinburgh, son of *Jonet Udwart*, now relict of *Johne Lummysdene* of *Blanerne*." William's wife was *Eliza Park*, which may account for what seems to have puzzled Cadmon, that the arms of Park appear amid the lavish heraldry of their mansion.

7. In the record of the Great Seal I find a charter to William Naper, eldest legitimate son and heir of William Naper merchant burgess of Edinburgh, of the lands of Wrychtishoussis, dated 20th December 1605. And another charter 15th April 1608, to *Master* William Naper and *Margaret Bannatyne** his spouse, of the same lands. This last notice enables us to read the story carved upon a triangular stone, without a date, now built above the school-house door at Gillespie's Hospital, where the initials W. N. and M. B. are so lovingly mingled with the mullets and crescents growing upon the Scotch thistle. The leading insignia of the Bannatynes of Corehouse and Newhall was the *mullet*, that of Naper of Wrychtishoussis, the *crescent*; for it is obvious that the mullets on the bend of the latter is their mark of dif-

* She appears to have been a sister of that celebrated George Bannatyne, whose exertions for the preservation of the poetry of his country during the great plague which ravaged Scotland in 1568, have obtained a grateful commemoration by the institution of the "Bannatyne Club," and an illustrious record in the compilation of his *Memoirs* by its first President, Sir Walter Scott.

ference from the original stock, Kilmahew, whose bend was charged with three crescents. The carving upon this stone is slight and faint, as here represented.



St Cuthberts was a most conspicuous and exemplary parish, under the auspices of its celebrated pastor Robert Pont, and still more celebrated heritor John Napier, during all the contentions of the clergy with King James VI. In its old records I find the following characteristic entry, of a date two years before the publication of the Logarithms: "Upon Thursday the 25th of June 1612, convenit, Mr William Arthur, Mr Richard Dicksone, ministers, &c. The quilk day, anent the supplication givin in be William Naper, laird of Wrytishouse, craving in effect that he myt have libertie to affix *ane dask at the west end of the Laird of Merchistoun's dask*; the session, because they know that he is ane honorable gentelman, quho bruiket office in the town of Edinburgh sundrie times, and lykwise *ane of the mayst ancient heritors in the parochin*, and that he has borne burdene in the King's and kirks stents, be ther presents grants and condescends that he *big ane dask there*, providing always that the session, upon the sight of ony uther ressonable or important cause, sall have liberty to transport and use the former sait quhen and quhair they plies, so that be thir presents the said William Naper clame no pro-

pertie nor heritage to the said sait and dask in the kirk, for the session nether may nor can give sick richt."

In the register of deeds there are two, dated 4th December 1618, which mention Robert Naper son lawful to *umquhile* William Naper of Wrychtishousis. Probably this was a younger brother of the following.

8. Upon the 6th December 1621, Sir George Touris of Gairltoun, Sir Archibald Naper of Edinbelly, (afterwards 1st Lord Napier,) Sir William Nesbit of the Dean, Sir William Fairlie of Bruntsfield, Mr John Cant of the Grange, and Mr William Naper of Wrytshouses, are a committee for laying on an assessment for repairing the kirk and kirk-dykes. Upon the 8th November 1627, William Naper of Wrytshouses is elected kirk-treasurer. These notices are from the old session books of the West Kirk, where I also find the following characteristic entry. The justices of the peace in the year 1629, pass an act for "suppressing of dear bridal lawyings," when, in presence of "Sir William Nisbet of the Dean, Mr William Naper of Wrightshouses, Mr John Cant of St Giels Grange, Justices of Peace, with consent of Mr William Arthor, minister, hail elders, &c. compeirit personale certane of the heritors, fewers, fermours, and inhabitants within the said parish, and declarit that they wer gritlie prejudyced and hurt be their servandis in giving to them exorbitant fees, the lyk whilk they wer never accustomet to pay of before, and they enquiring of the said servandis what was the cause of the heightning of their fees, their answer was that *two brydell lawings wald ballance the best of their hale yeres fees*, and that their *frequent going to bridals and paying abun reason for their lawing* was the only cause of the heichtning of their fees." The Justices for remedy thereof ordain, "That all bridal lawings within this

parish shall not exceed 12 shillings the man, and 10 shillings the woman, whether the bridal be in the house or out the house," and that under certain penalties.

9. Upon the 28th January 1640, Mr William Naper of Wrytshouses is unanimously elected kirk-treasurer. This may have been a new generation of the favourite family name, derived from William the constable.

There is something almost pathetic (a rare property) in Lord Stair's report of a case, which affords melancholy symptoms of the passing away of this ancient and respectable family. "February 6, 1680,—Napier of Wrightshouses having died without issue, two women of his name, of a far relation, gave in supplications," &c. claiming to be served heir. One of these ladies and the representative of the other were afterwards served heirs-portioners.

The property latterly passed through the hands of several proprietors, in particular, General Robertson of Lawers, and Hamilton of Bargeny, who all kept up the ancient muniments and grandeur of the place in a style very creditable to their taste and feeling. This armorial structure made a narrow escape during the rebellion of 1745. Upon one occasion a small party of the adventurers took refuge there from the King's troops, and were complimented with a shower of cannon balls from the Castle of Edinburgh. Not a ball of the Castle would touch its old ally the Wrightishousis, but many buried themselves in its park, and an old man of the name of Adamson, who related the story, had nearly lost his head from one of them when a boy, as he was looking out of a window in the adjacent village.*

* I was favoured with this anecdote by Mr Smellie, printer, who is curiously informed in the antiquities of Edinburgh.

There is nothing particularly distinguished about this ancient race of quaint and quiet lairds ; but they are interesting as having possessed for so long a period that beautiful suburban Castle, whose traditionary history is rife with ancient legends and modern ghost-stories. Its *heraldic* history, as proudly recorded on the walls as if theirs had been the House of Valois, claims no connection with the Lennox, further than the obvious cadency from Kilmahew, and indicates no cadency with Merchiston, whose Lennox saltier is contemporary with the oldest record I have discovered of the Napier bend. This is a marked separation of a very ancient date between these families. The insignia so multiplied about the old Castle we have explored, clearly indicate a cadency from Kilmahew, yet there is not a vestige of the shield of Merchiston having been upon the



Arpchtishoussis.

But there was the marriage between the families in 1513, and “the dask at the west end of the Laird of Merchiston’s dask” in 1612; and no doubt the stately Baron of that gaunt and grim-looking tower, with his constant companion, and alleged familiar, the jet-black chanticleer, was very popular in the “goodly dwelling and a rich” of his neighbour and cousin, who might greet him with—“By cock and pye, Sir, you shall not away to-night.”



II.

REPLY TO MR RIDDELL'S ASSERTION THAT THERE IS NO FOUNDATION IN FACT FOR THE STATEMENT CONTAINED IN THE FIRST LORD NAPIER'S ATTESTATION, THAT THE NAPIERS IN ENGLAND WERE HIS NEAR RELATIVES, AND CADETS OF MERCHISTON.

MR RIDDELL, in opposition to the genealogical fact stated in the Memoirs of Merchiston, that the Inventor of Logarithms and Dr Richard Napier (whose portrait and rosicrucian fame are preserved at Oxford) were brothers' sons, has conceived an extraordinary idea. He has the hardihood to maintain that the wealthy and distinguished families of Napier, first established in England by two distinct cadences from Merchiston in the sixteenth century, had all along been labouring under a delusion—as their existing descendants are to this day—when they supposed themselves to be cadets of Merchiston in Scotland, and carried armorial bearings accordingly. He asserts that it is “impracticable to connect” the Napiers of Luton-hoo, &c. with Merchiston; and adds, “we may hold that their Merchiston origin *is a mistake*, and that, however subsequently famous and well allied, they can reflect neither credit or discredit upon the Scottish Napiers.” What, then, is our antiquary's own theory in regard to these families? Whence came Sir Robert of Luton-hoo, and the astrological Doctor?

“To whom related, or by whom begot?”

He knows nothing about them; and leaves the matter

quite unexplained, though faintly colouring his most *ante*-antiquarian argument by a slight allusion to *Menigarus de Naperie* in the reign of Henry II., upon which he argues as follows : “ We might *thence* infer, owing to the antiquity of *the one over the other*, that if there be any connection between the English and Scottish Napiers, the latter derive their origin from the first, which would further refute the notion of a Lennox descent. Mr Napier, however, unhesitatingly affirms, that the Napiers of England are cadets of Merchiston, and significantly adds, in reference to them, ‘ for English and Irish Napiers, cadets of Merchiston, see Collins, *passim*,’ with the natural view of showing that the blood of Merchiston in this manner circulates among all our nobility. But it unfortunately happens, that there is no evidence upon record to instruct the fact.” Now, “ it unfortunately happens” that this bold challenge by the learned genealogist involves the somewhat scandalous proposition that Sir Robert of Luton-hoo, and his brother Richard, were not only misinformed generally as to their extraction, but were totally mistaken, or pretended to be so, as to who their *own father* was.

In Sir William Dugdale’s *Usage of Arms*, printed at Oxford 1682, and in the official register of baronets therein published, appears, among the baronets created by James VI. 25th November 1612, “ Sir Robert Napier, *alias Sandy*, of Lewton How, Knight ; and among those created by Charles II., under date 4th March 1660, “ John Napier *alias Sandy*, Esq. with remainder to Alexander Napier, &c. with remainder to the heirs-male of Sir Robert Napier, Knight, grandfather to the said John ; and with precedency before all baronets made since the 24th September *Anno 10 Regis Jac.* (1612,) ”

at which time the said Sir Robert was created a baronet; which letters patent, so granted to the said Sir Robert Napier, were surrendered by Sir Robert Napier, (father of the said John and Alexander) lately deceased, to the intent that the said degree of baronet should be granted to himself, with remainder to the said John and Alexander."

The authenticity of this register cannot be impugned, and the *existence* (for we must reason closely against the author of the Tracts) of Sir Robert Napier of Luton-hoo, created a baronet in 1612, is proved. A *presumption* is at the same time raised by this record, that Sir Robert was of Scotch extraction, from the *alias Sandy*, the Scotch diminutive of Alexander. It is equally certain that this baronet had a brother, Dr Richard Napier, rector of Lindford in Buckinghamshire, whose history and portrait are given in the Memoirs of Merchiston. The celebrated astrologer, William Lilly, gives the following anecdote in his life and times, which is otherwise corroborated. "A word or two of Dr Napper who lived at great Lindford in Buckinghamshire, was parson, and had the advowson thereof. He descended of worshipful parents, and this you must believe, for when Dr Napper's brother, Sir Robert Napper, a Turkey merchant, was *to be made a baronet in King James' reign*, there was some dispute whether he could prove himself a gentleman for three or more descents; 'By my saul,' saith King James, 'I will certify for Napper that he is of three hundred years standing in his family, all of them, by my saul, gentlemen.' "* William Lilly was

* The meaning of this attestation was, that the King was intimately acquainted with the descent of the *family of Merchiston*; whose successive lairds had been distinguished at the court of the Stewarts for centuries. Now the contemporary authority even of King James upon the point is better than Mr Riddell's dictum.

personally acquainted with Dr Richard, and could scarcely be mistaken as to his relationship to Sir Robert, which, however, is otherwise abundantly proved. John Aubrey, in his miscellanies, says that Dr Richard Nepeir, "left his estate to Sir Richard Nepeir M. D. of the College of Physicians London, from whom Mr Ashmole had the *Doctor's picture, now in the museum.*" This Sir Richard is well known to have been the nephew of Dr Richard, and a younger son of Sir Robert.* Further, Sir Archibald, afterwards first Lord Napier, being applied to by the above Sir Robert to furnish him with an authentic certificate of cadency, returned one accordingly, possessing in its antiquities, or in the fulness of the record, no great genealogical merit, but scarcely to be questioned in this statement, that Alexander Napier, his, Sir Archibald's, *grand-uncle*, "had issue the foresaid Sir Robert Napier, Knight and Baronet, Richard Napier of Lindford, *now living*, and divers others sons and daughters."

The document quoted from stands directly in the way of Mr Riddell's theory, for it contains an undisputed assertion of the fact of immediate cadency, addressed to the very gentleman who our antiquary declares was not a cadet of Merchiston at all. Seizing, however, certain vulnerable points in certain *copies* of Sir Archibald Napier's certificate of cadency, which copies he says "are discrepant, and there can be little doubt garbled," he holds the entire proof, without distinction, *pro non scripto* in the question, in these words: "In short these garbled statements, as to the *supposed* *Scoto-English* Napiers, contradictory of each other, and *suppressing*† certain members of the family, besides emerging from a foreign country, cannot be depended upon.

* See *Fasti Oxonienses*.

† The document in question is meager in the collateral genealo-

The original document, transmitted by Sir Archibald under his own hand and seal to Sir William Segar, I have not been able to discover. Various copies of it appear to have been made at the time for different branches in England ; and the consequence is, that in some of these copies palpable blunders have crept into the enumeration of the generations of the Merchiston descent, which create a corresponding difference in the generation of Sir Robert of Luton-hoo, and alter his *position to that extent* on the family tree, without, however, affecting the question of *cadency*. For instance, in a copy of the document printed in Hutchins' history of Dorsetshire, there are *three Alexanders* lairds of Merchiston recorded in succession, where there should only be *two*. It is an obvious blunder, however, which the charter-chest of the family corrects, and which probably was not in the original. There is another manuscript copy in Lord Napier's possession, from which the statement in the Memoirs of Merchiston is taken, and which is *perfectly accurate* in its enumeration of the generations of the family, as proved by the charter-chest. This copy came into the family, accompanied by the following letter from Napier of Blackstone, grandson of the philosopher, to Sir William Scott of Thirlestane, who had married the heiress of Napier, and whose son Francis, fifth Lord Napier, at that time a boy, had already succeeded to the title.

“ Sir,

I received a letter from Killcreuch, wherein he desires me to transmit the double of ane manuscript I

gy, the object of it being solely to point out the cadency of the English Napiers. The odious term “ suppressing ” is used by the author of the Tracts for *the nonce*,—it is his controversial *manière*. See another instance, *infra*, p. 204. By “ foreign country ” the author of the Tracts either means England or Scotland, but it is not easy to say which.

had from Sir Robert Napier of Puncknoll, in the county of Dorset, (with whom I was very intimate), being the extract original and ryse of the Napiers in Ingländ and Irland, transmitted to him by my uncle Archibald Lord Napier, when he was thesaurer deputt, the first of King Charles the First, and recorded in the herald's books. It is not so cleir and full as I could wish; bot if the several papers and documents that were given out and entrusted to Sir George Mackenzie, Advocate, when he designed his heraldrie, and yet made no mention of the familie, which, if found, might be of use with what you may otherwise find in the charter-chest. Wishing all health to my prittie Lord, I pray God he may be a comfort to you, and others the relations, to the raising and standing of the families of Napier. Believe that I am, in all sinceritie, Sir,

Your most obedient most humble Servant,

Blackestoun 24th March 1712.

A. NAPIER.*

Napier of Blackstoun was the intimate friend of Sir Robert Napier of Puncknoll, and neither of these gentlemen had any doubt of the fact, that the English fami-

* Part of this letter is very imperfect in construction, but the sense is obvious. The writer of it, Alexander, son of Adam youngest son of the Inventor of Logarithms, was 69 years of age in 1712. He alludes, probably, to a work projected, but never executed, by Sir George Mackenzie, and these family papers had been intrusted to him, to inform him better on the subject of the Merchiston descent, than, as appears from his *adversaria*, Sir George had been. The first Lord Napier in his genealogical paper (1625) states, that he then possessed family documents in which his ancestors were called *Napier alias Lennox*. In the Merchiston charter-chest only a single charter of the first laird is to be found, and no document to throw any further light upon that laird's descent. The carelessness of restoring family documents "given out and entrusted" for antiquarian purposes, is cruel and destructive, and brings the respectable name of antiquary into disrepute with the possessors of historical charter-chests.

parties then in life, it would be strange indeed if all this were a dream, and the Napiers of Luton-hoo, &c. only "supposed Scoto-English Napiers." Now the preamble of this document is as follows: "To all and sundry person or persons, to whom these presents shall come, greeting: Know ye that I Sir Archibald Napier of Merchiston, in the kingdom of Scotland, knight, depute-treasurer, and one of his Majesty's privy-council there, for as much as *my entirely beloved kinsman* Sir Robert Napier of Luton-hoo, in the county of Bedford, knight, baronet, being desirous to be informed of his pedigree and descent from my house, I have, to satisfy his lawful and laudable request, herein declared the truth thereof, and the *origin of our name*, as by tradition from father to son (we) have generally and without any doubt received the same."

To this evidence of the Scotch extraction of Sir Robert and his brother, must be added the testimony of old John Aubrey, who was born about ten years before Dr Richard Napier died, and who was the best informed gossip of his day. He was a great friend and source of information to Anthony a Wood, author of the *Athenæ* and *Fasti Oxonienses*. Anthony used to say, "Look, yonder goes such a one, who can tell you such and such stories, and I'll warrant Mr Aubrey will break his neck down stairs rather than miss him." After giving a very curious history of the astrological Doctor, in his miscellanies, Aubrey thus concludes: "This Doctor Richard Napier was rector of Lyndford in Bucks, and did practice physick, but gave most to the poor that he got by it. Tis certain he told his own death to a day and hour. He died praying upon his knees, being of a very great age, 1634, April the first. He was *nearly related* to the learned Lord Nepeir, Baron of M...

in Scotland ; I have forgot whether *his brother*. His knees were horny with frequent praying."

Thus, though Mr Riddell treats with derision the idea that Sir Robert and his brother were "Scoto-English Napiers," the fact even of their immediate Scotch extraction is proved *ex abundanti* by the universal understanding of the period,—by the Scotch *alias Sandy*, by the unhesitating admission of Sir Robert Napier himself,—by the express declaration of Sir Archibald Napier of Merchiston,—by the testimony of Aubrey, who had some idea that they were brothers of the Inventor of Logarithms,—and, we may add, by the universal and unhesitating admission and belief of every Napier belonging to these English Napiers of Puncknoll, Luton-hoo, Middlemarch, &c. down to the present day.

It only remains to see what was the precise relationship. Sir Archibald in his certificate thus gives it. "Sir John Napier of Merchiston and Ruskie had issue Archibald, father to Sir Alexander and James; Sir Alexander had issue Sir Alexander, who had issue Sir Archibald and Alexander; Sir Archibald had issue Sir John and Sir Alexander; Sir John was my father.* Alexander, second son of Sir Alexander, and brother to Sir Archibald my grandfather as aforesaid, having *spent the greatest part of his youth in foreign parts*, came into England in the time of King Henry VIII., and had issue, the foresaid Sir Robert Napier, Knight and Baronet, Richard Napier of Lind-ford, now living, and divers other sons and daughters," &c. According to this statement, Sir Robert Napier and his brother were the cousins-german of Sir Archibald's father, the Inventor of Logarithms; and, holding what we have quoted to be

* These lairds were not all knights. This probably is an inaccuracy of the transcript.

really the genealogy as transmitted by Sir Archibald, it is unlikely that he should be entirely mistaken as to the history and family of his own grand-uncle. But that the above is substantially an accurate transcript of the original certificate may be assumed, as it is in point of fact an accurate genealogy, so far as it goes, of the family of Merchiston. This can be proved by a comparison with the genealogy in the peerage, which was most carefully and accurately drawn out by Francis, seventh Lord Napier, from his family papers. His Lordship indeed had even been too cautious in making out that genealogy; for, going entirely by his charters and original deeds, and not finding the ancestor of Luton-hoo mentioned among the other children of that generation, he formed the opinion that there was no authority for his existence, and that the ancestor of Luton-hoo must have been Alexander Napier of Ingliston, a younger son of Merchiston some generations prior to the reputed father of Sir Robert. But his Lordship had not adverted to the circumstance, that the Alexander recorded by Sir Archibald, as Luton-hoo's father, had been *foris-familiated* at a very early period of his life, had spent his youth abroad, and then settled and married in England, which sufficiently accounts for the absence of his name from the family papers. Besides, Alexander Napier of *Inglistoun* could not have been (as the author of the Tracts himself takes most unnecessary pains to prove,) the ancestor of the English Napiers; for he lived, and married, and died in Scotland; the Merchiston charter-chest is full of parchments referring to him and his spouse Isobel Littill; and both of their seals and signatures are attached to some of those deeds. Now most assuredly, as Mr Riddell very gravely argues, Isobel Littill was not a Birchley of Herefordshire, or the mother of the baronet of Luton-hoo.

But since our antiquary will not admit the authority of Sir Archibald Napier, nor the evidence of any transcript of his original certificate, nor the universal admission and belief of all the "Scoto-English Napiers" themselves, to prove this cadency from Merchiston, surely he will admit the contemporary and official record of the fact. Now that genealogy, put on record in the lifetime of Sir Robert and Dr Richard Napier, stands thus :

Married.

Sir Alexander Napier of Mercaston, Knt.		—— daughter to Cambell of Glen- [orchy.]
Alexander Napier of Exeter, 2d son.		Anne, daughter to Edward Birchely of Hertfordshire.*
Sir Robert Napier of Luton in the coun- ty of Bedford, Knt. and Baronet.		Mary, daughter to John Robinson of London, who came from Drayton- Basset in Staffordshire.
2d wife.		1st wife.
Penelope, daughter to John Egerton, Earl of Bridgewater.	Sir Robert Napier, Knt. sonne and heire, living 1633.	Francis, daughter to Sir Will. Thornhurst of Agincourt, Knt.
John Napier died an infant.		Robert Napier sonne and heire, 8 annorum, 1633.

It would appear from the above, that the second Sir Robert had not yet succeeded his father in the baronet-

* Mr Riddell has two very valuable and instructive pages (135, 136) to prove that Isabel Litill (the wife of Alexander Napier of Inglis-ton) could not be Ann Birchely (the wife of Alexander Napier of Exe-ter;) and he also gives the history of one *Helen Litill*, whom he has not connected with Isabel, but *supposes* them sisters purely for the sake of indulging in the following sarcastic remark: "Admitting the fact, which seems extremely likely, the Napiers would *then* be connected with royalty, for it is a curious circumstance, and one possibly little known, that Helen was '*nourice*' (*nurse*) to James VI. which *lacteal relationship*, it is *not improbable*, may have tended to aggrandize them," i. e. the family of Merchiston. If the author of the Tracts will write nonsense, he might enliven it a little; he should have called the hypothetical relationship, a milky-way to preferment, of more avail than the paths of their astronomy. But they *had* a "lacteal relationship" to royalty, though that had little to do with their aggrandizement. Annabella, the Countess of the

cy, and it is certain that his uncle, Dr Richard, did not die until 1st April 1634. Upon a comparison with Dugdale, it is obvious that before 1696 the boy Robert,* son of Sir Robert's first marriage, had failed, and that his father had, subsequently to 1633, two other sons, John and Alexander, by his second wife.

Here, then, is the first Sir Robert's Merchiston origin admitted in his own time, if not actually recorded by himself; and also the name of his mother, Anne Birchley,

good Regent Mar, and Sir Archibald Napier of Merchiston, were sisters' children. This lady, it is well known, was intrusted with the infant person of James VI.,—"his Hiennes continuing under her nurture as towards his mouthe, and ordering of his person." Whether she nourished him at her own bosom, or consigned that "lacteal relationship" to Helen Litill, I leave as a question worthy of Mr Riddell's minute researches. Upon one occasion, all the ladies of the household, including the Countess, were called out of bed in the middle of the night, because the royal babe was seized with colic; it was remarked that the Countess *had a shift on*,—a rare event in those days,—and the excuse assigned was, that her ladyship was "*tender*," i. e. in delicate health.

* This boy Robert had a splendid genealogy through his mother. Her mother was the daughter of Thomas Howard, Viscount Bindon, whose father was Thomas Howard, Earl of Surrey and Duke of Norfolk, and her mother, Elizabeth, daughter of Edward Stafford, Duke of Buckinghame.

Luton-hoo became extinct in the male line about the middle of the last century. Dr Charles Loudon, M. D. of Leamington Spa, very kindly commenced a correspondence with me from that place on the subject of the antiquities of Merchiston, and has furnished me with some very interesting information. Among the rest, he mentions, that, happening to broach the subject in the family of Cox of Eaton-Bishop, Miss Cox said, "we are descended from that family, (Merchiston,) and possess our estate of Eaton-Bishop in Herefordshire through our ancestor Dr Napier, who was a physician in the time of James I., Charles I., and even physician to Old Noll." This was accidentally communicated to me by the polite attention of a stranger, who had not the slightest knowledge of the matter being controverted in Scotland.

in right of whom Sir William Segar adds to the Luton-hoo quarterings, "the 4th partye ane cheveron *or* and *vert*, 3 birchen branches counterchanged of the field by the name of Birchely;" while he gives for her husband, "The first, *argent* ane salter engralled betwixt four roses *rubies*, by the name of Napier."

The above details were not inserted in the voluminous Memoirs of Merchiston, nor have they been given now as fully as they might. So much, however, was rendered necessary by what has been quoted from Mr Riddell's recent work, and also from what follows: "The learned gentleman, while *charging Sir Walter with ignorance*,* owing to this remark, positively affirms that these two Napiers and the Inventor of Logarithms were near relatives,—nay, even *brother's sons*,—which circumstance, he *rightly adds*, is not generally known;—in this event, they would be sons of a younger brother (although *a nonentity it is conceived*) of Sir Archibald the Inventor's father, and grandsons of Alexander Napier of Merchiston. It would have been *highly obliging* if Mr Napier had *condescended* upon evidence of the fact, which, if true, might have been had in *abundance*, owing to the recentness and extreme nearness of the connection."

There are other families of the name of Napier, besides Luton-hoo, mentioned in the first Lord's certificate,

* Tracts, p. 137. May we suggest, that to alter the plain words of an author, so as to pervert them from an innocent and respectful, to an offensive and derogatory meaning, is not within the pale of legitimate controversy. The author (*Memoirs*, p. 7, *note*) alludes to Sir Walter Scott's sagacity in conjecturing that Dr Richard Napier was "of the stock of the Scottish Napiers;" and he adds, "our illustrious author was *not aware of the near relationship*," &c. Indeed the fact was sufficiently honoured by Sir Walter's notice.

as derived from another cadet of Merchiston, who settled in England at an earlier period than the father of King James' baronet, and the cunning Richard. This cadency became highly distinguished in its various branches of Tintinhull, Puncknoll, Middlemarchall and Morecritchill. The position of their common ancestor on the Merchiston tree is thus stated in the copy of the certificate in my possession. "Sir John Napier of Merchiston and Ruskie had issue Archibald, father to Sir Alexander and *James*. James aforesaid, coming into England in time of King Henry VII., and first planting himself in *Swire* in the county of Dorsett, who had issue Edward of Oxford and Swire, James of Middlemarchall in the county of Dorsett, Nicollas Naper of Tintinhull, in the county of Summersett; from the elder brother Edward, descended the Napers of Oxford; the second brother James of Middlemarchall, was father to Sir Robert Naper of Middlemarchall, sometime Lord chiefe Barron of Ireland, and father to Sir Nathaniel Naper; James had divers others issues, being grandfather to John Naper and Robert Naper of Puncknoll, in the county of Dorsett, Esq. and divers others of that name, now living in that county. Nicollas Naper of Tintinhull in the county of Summersett, hath also divers issues."

Such, generally, was the state of that cadency in the year 1625, when Sir Archibald Napier wrote this account, and he is amply corroborated by the historical antiquities of England, at least as to the *existence* of the individuals whom he here mentions. Robert Naper is recorded in the *Fasti Oxonienses*, as of Exeter College, A. B. 1561. He became a student of law, and was by Queen Elizabeth raised to the bench as Lord Chief Baron of Ireland in 1593, and knighted. He was high sheriff of Dorsetshire in 1606, died 20th September

1615, and is buried in the church of St Andrew at Mintern-Magna. He married Magdalene, daughter of Sir Anthony Denton, and their only son was that Sir Nathaniel who is mentioned by Sir Archibald Napier as alive in 1625. He was knighted by King James at Newmarket in 1617, was high sheriff of Dorsetshire in the 18th year of that reign, and represented it in Parliament in the first year of the reign of Charles I. that is 1625. He built a splendid mansion at Morecritchill, which became the chief seat of his family. Sir Nathaniel also reposes in the church of *St Andrew* at Mintern-Magna, and upon his tomb is inscribed, "Here lies the body of Sir Nathaniel Napier, the only son of Sir Robert, of much esteem and honour in this county, who died the 6th of September 1635." Above his tomb, and above his *father's* tomb, amid the quarterings and impalements of this family, the shields which occupy the first armorial place are, *Napier, a saltier engrailed between four roses.*

This junior branch of the eldest English cadency from Merchiston, continued (to a comparatively modern date, when it became extinct in the male line,) through Sir Nathaniel, Sir Gerard, &c. to enjoy successively high distinction in the county of Dorset as sheriffs and representatives in Parliament,—forming alliances with the families of Gerard, Colles, Windham, Guise, Worsley, Wymondly, Phelps, and Oglander,—suffering for loyalty,—receiving royal progresses at Morecritchill,—and laying their bones in St Andrew's of Mintern-Magna, under the heraldic story of the *St Andrew's Cross of the Levenax*, which no one of them ever doubted.

Sir Nathaniel married Elizabeth, sole daughter and heir of John Gerard, Esq. of Hyde in the Isle of Purbeck; she died on the 7th of October 1624; all this

appears upon her tomb at Mintern-Magna. Their *second* son, Robert, became possessed of, and established at, Puncknoll in Dorsetshire, which, as mentioned in the Merchiston certificate, had in 1625 belonged to an elder branch of the family. This Robert was master of the Hanaper office in the reigns of Charles I. and II., and enjoyed many employments at court, the family being of unshaken and devoted loyalty. His son and heir, Robert, was in his father's lifetime master of the Hanaper office; and King Charles II. sent for him to court, knighted him, and appointed him high-sheriff of Dorsetshire. Soon afterwards, in 1681, the same monarch created him a baronet. He served in the Convention Parliament, and other succeeding Parliaments, for the boroughs of Weymouth, Melcomb-Regis, and Dorchester, and died in 1700. The male line of this branch became extinct before the close of that century. Their shield displayed *argent a saltier engrailed cantoned with four roses gules*.

From the *fourth* son (James) of Sir Nathaniel Napier and Elizabeth Gerard, descended Nathaniel Napier of Loghrew in the county of Meath, Ireland,—General Napier, and others. This latter was Lieutenant-General and Commander-in-chief of the Forces in Ireland, and died in 1739. Of this Irish branch James *Lenox* Napier became Lord Sherbourn; one of whose daughters married Viscount Andover, son and heir of Charles Earl of Suffolk, and his son married the daughter of Lord Stawel; another of his daughters married Prince Bariatsky of the Russian Empire. This branch, too, not only carried the Lennox arms of Merchiston, but sometimes gave the name of Lennox to their children.

The branch of Tintinhull, elder than the Morecritchill branch, is represented to this day in lineal male de-

scent by a Napier, and I believe is the only branch of all the English cadences from Merchiston of which that can be said. The manor of Tintinhull in Somersetshire, or as it is called in Domesday book "Tintehalle," was possessed by Nicholas Napier in 1625, and his lineal male descendants kept possession until very lately. The present representative is Colonel Charles George Napier, formerly of the Royal Artillery. Through the late Lord Napier I obtained from this gallant officer another copy of the certificate of cadency by Sir Archibald Napier, which precisely agrees with the copy in the Merchiston charter-chest. This family never entertained a doubt of their cadency from Merchiston, and have constantly carried *argent, a saltier engrailed, cantoned with four roses gules*. Unfortunately the estate of Tintinhull was very hastily sold in the minority of the present representative.*

Such is a meager account of that other distinguished and populous cadency from Merchiston, which the learned author of the Tracts must either hold to be a race of phantoms or of puppets. If his theory be that the first Lord Napier dictated them from his own imagination, of course he considers them phantoms. But if he mean that his Lordship, from some unaccountable whim, or all to aggrandize the "Turkey merchant," seized upon certain distinguished families in England,—haply

* This is the only Colonel Napier (in life,) of the many so distinguished in the battles of their country, who is not in lineal male descent a Scott of Thirlestane. The gallant seaman, too, who in piping times of peace took a fleet for pastime, is a Scott of Thirlestane. Napier of Tintinhull, as a British officer, has also added lustre to the Napiers of Merchiston, having fourteen wounds, and two limbs disabled.

descended from *Manigarus de la Naperie*, or the *Venator Regis*,—to bud them unnaturally upon his tree of Merchiston, then they were his puppets, for they believed him, and, while forming alliances with the best blood of England, planted his Lennox roses about their tombs, and christened their childrens' children Lennox! But the sentence by which Mr Riddell lops off this important branch, and contemptuously rejects the attestation of their chief, combines the close reasoning of a Hume (not David) with the nervous style of a Cobbett. "In the above attestation of the first Lord (he says) there is a John *foisted in* at an earlier period, and made the ancestor of *other* English Napiers; but the fact is quite uninstructed; in other transcripts he is called James,—*in short*, as has been observed, these garbled statements as to the *supposed* Scoto-English Napiers," &c. &c.

Let us take a walk in Dorsetshire again, for there is a healthful scope and plentitude of record, about the Hundreds and Liberties of merry England, that serves to invigorate and enlarge the antiquarian mind.

James, (it may be John,) grandson of John Napier of Merchiston and Elizabeth Menteith, first planted himself, says Sir Archibald, in Swyre in the county of Dorset. Let us go to Swyre,—situated in the Hundred of Uggescomb, on the British channel, one mile from the sea, cold and bleak, but the air is healthy. Are there any traces to be met with in authentic records of any Napier having settled there at that early period? From such records it appears that the manor of Swyre, once the possession of Margaret Countess of Sarum, was granted by King Henry VIII. to *Edward Napper*. This manor of Swyre, with 17 messuages 6 cottages and 640 acres of land, he held of the King in chief by fortieth part of a knight's fee; and also the advowson.

of the church. In the 15th of Queen Elizabeth, William, son and heir of Edward Napper, gent. held the premises, the gift of King Henry to his father, val. L. 7, 8s. 3d. Now the pedigree of the family of Morecritchill records this Edward as the eldest son of *John Napper of Swyre* in the reign of Henry VII., and Anne, daughter of John Russell of Berwick, a marriage of which the Merchiston certificate takes no cognizance, and which, therefore, must have been derived from some other source. Neither does Sir Archibald, while he names the place where this John, or James, first planted himself, take any charge of the place of his *burial*. But the Morecritchill pedigree says he was buried *at Swyre*,—so to the church of Swyre let us go.

It stands at the south end of the parish, and was dedicated to the Holy Trinity in 1503. It consists of a chancel and body, with a porch on the north and south, and a tower in which are, or were, three bells. The *chief* monument is on the north wall of the chancel, and is composed of freestone. On the top an urn, between two death's heads, and under it a cherubim; at the base, an armorial shield, being *a saltier engrailed cantoned with four roses, and a crescent of difference*. Let us read the inscription:

“ In memory of *James Napier*, gent. brother of Sir Alexander Napier of Merchiston and Rosky, Kt. who was descended from the ancient family of Lenox, in Scotland, which Earles changed their name of Lenox for Napier, at the command of their King of Scots, upon the account of a victory obtained against his enemies by Donald, second son of the then Earl of Lenox, commanding his father's men, which Donald was then made the King's servant, who gave him lands, which the Napiers still enjoy by the name of Lenox, *alias* Napier.

In time, the earldom fell to two daughters; the youngest was married to Allen Stewart, ancestor to King James the First, *who commanded** Sir Robert Napier of Lutonhow in Bedfordshire, upon creating him Baronet A. D. 1612, to send for his pedigree out of Scotland, whereby it appears that are descended as aforesaid all the Napiers of England. The said *John* Napier, *who lies here interred*, came into England in the reign of H. VII. settled here, *and supplied the several adjacent Abbays with fish*; from whom are descended the Napiers of Dorset and Somerset. All this is attested by Sir Archibald Napier, Kt. privy-counsellor, and treasurer to our King James the First, and recorded in the herald's office by Sir William Segar, Kt. garter, September 1st, A. D. 1625. This monument was erected by the Honourable Sir Robert Napier, Kt. A. D. 1692."

In the antiquities of the church it is stated, that "before the above monument was erected, *here was a brass plate in memory of this gentleman*, now lost." Now though this inscription be but an inaccurate abstract of the Merchiston certificate, with its doubtful tradition, and meager and faulty antiquities, it is excellent evidence of a James (or John) Napier having settled at Swyre, just as Sir Archibald said; for it is not *that* circumstance, but the *Lennox descent* which is here recorded solely upon his attestation. Local knowledge, and probably the *brass plate* had told that Napier of Swyre was buried there, and the personal and particular anecdote

* I had not observed the account of this monument and inscription when compiling the Memoirs of Merchiston. It would appear that it was King James himself who had suggested to the Turkey merchant to apply to Sir Archibald for his pedigree, (which agrees curiously with Lilly's anecdote, see *supra*, p. 194,) though that had not been done, it would seem, until 1625. There is the discrepancy of *James* and *John* in the above, which we leave for Mr Riddell.

(certainly not derived from Scotland) of his catering for the luxurious Abbeys, is so invaluable corroborative, that we care not though he had carried the fish in a creel. We have, then, not only found the John or James "foisted into" the Merchiston certificate, but we have ascertained some of his dealings, the name of his wife, and the very spot of his interment at Swyre. Nor must we omit to record his charity, (it may be that of his son,) which extended beyond the circle of Swyre. In the Hundred of Goderthorn, and tything of Adelyngton, there stood the Hospital of St Mary Magdalene, for lepers, suppressed in 1553. It appears from the records that *James Napier of Swyre*, yeoman, gave by will, *sans* date, five shillings yearly to the use of the poor in this hospital for ever; if the annuity be unpaid on the day of St John the Evangelist, they or their deputy to distrain on his lands at Baglake.

Yes, says the author of the Tracts, but in the year 1625 the distinguished families of Tintinhull, Middlemarchall, Puncknoll, &c. had all become ashamed of the fishman of Swyre, and as the Turkey merchant—the *novus homo* of Luton-hoo whose descent was unknown, and who did not even know who his own father and mother were—was getting a pedigree to himself from Scotland under the auspices of James VI., they conceived the idea of being included in the same patent of gentility; Sir Archibald Napier was a courtier and a creature of that monarch, so he *fathered them all*; and this "lacteal relationship," (for there was much of the milk of human kindness in it,) probably was the cause of his own subsequent elevation to the peerage; and thus it was that these *supposed* Scoto-English Napiers *foisted* the Lennox arms upon their tombs at Mintern-Magna.

What, then, does our learned antiquary make of the fact, that these Napiers carried the Lennox arms half a

century before the date of Sir Archibald's certificate?— but let us stroll among the Hundreds and Liberties again.

Adjoining to the free-school of Dorchester is, or was some years ago, a handsome alms-house for ten poor men ; before it a neat piazza, in it a small chapel, and over the door in Roman capitals,

NAPPER'S MITE.

Underneath is the *Lennox shield of Napier*, and this inscription, " Built to the honour of God, by Sir Robert Napper, Knt. 1615." This was the chief baron of Ireland, who died in September of that same year, and his *Lennox shield* is also placed, matrimonially with that of both his wives, in the church at Mintern-Magna.

In the Hundred of Uggescomb there is the church of St Mary, whose walls are crowded with the arms of Merchiston of various dates. In the south aisle, under which is a vault, may be seen a mural monument of freestone. On the top the *Lennox shield of Napier*, crest a pyramid, on its point a globe, and under it, cut in stone, and in Latin, " William Napier, Esq. formerly patron of this church." It also appears by another Latin inscription cut on the stone, that " the said William Napier presented William Carter, clergyman, to this rectory 26th June 1597." On the same monument there is a brass plate containing the *hic jacet* of this William. An. Dom. 16 . . and recording, that he had travelled several years in foreign lands, and married Anne Shelton, daughter of William Shelton, Esq. of Onger Park in Essex. Upon this plate, too, is *the Lennox shield of Napier*, with a lapwing for crest, under which is a man in armour kneeling at a desk with a book.

One other proof may be afforded. It appears that this cadency had some connection with the county of

Devonshire at a very early period, for in the "Alphabet of Arms" compiled from the most authentic authorities by Joseph Edmondson, Mowbray herald extraordinary, I find recorded, "*Naper, Devonshire, argent a saltier engrailed betwixt four cinquefoils gules* ; crest 'a demi-antelope erased *or*, attired *ar*. August 1st 1577."

To have been favoured by the learned author of the Tracts with more accurate antiquities than the Memoirs of Merchiston afford, would have been a boon thankfully received,—to have been substantially refuted by him, an honour duly appreciated. But the contemptuous controversy of a desultory Tract, which strives to discredit a laborious work without aiding it, deserves neither thanks nor praise. The learned antiquary's aim almost appears to have been to leave no excuse to the author for having compiled the Memoirs of Merchiston. He virtually says,—the antiquities are naught, founded on fabrications or imagination,—the conspicuous men, of Napier's day were immoral hypocrites, and his own character has been partially eulogized,—his very portrait was not worthy of being engraved, nor his genius of illustration ; for Mr Riddell is enamoured of a dictum of Scaliger's,—"*Præclarum ingenium non potest esse magnus mathematicus*"—"which," says he, "may apply to Napier with *due force*, for his pursuits were limited, and chiefly confined to the department which this great authority pointedly undervalues ; indeed, it is thought by some that mathematics contract the mind, and unfit it for other pursuits."* Having thus severely pronounced upon our venerable philosopher in the *morale*, he concludes by insulting him in the *physique*. Alluding to

* Tracts, p. 113, *et infra*.

the family resemblance between the portraits of Merchiston and Dr Richard, he says "*like is an ill mark*, and the learned gentleman well knows that it is no evidence in law ; indeed, all the philosophers and wizards at the time, judging from their *starched and owlsh visages*, as exemplified in pictures where the same costume and attitude are observed, bore a *wonderful* likeness to each other."

We cannot cope with Mr Riddell in irony and sarcasm ; but why is he so severe throughout upon us and our Coryphæus ? If the critics of this splenetic world were always to obtain credit, genealogists would fare no better than mathematicians, and antiquaries be as severely pictured as philosophers and wizards. It was the elegantly malicious author of the *Memoirs of Grammont*, who, when characterizing that strange person M. de Sénantes, said of him that he was "*fort en généalogie comme sont tous les sots qui ont de la mémoire*,"—a foolish saying, like Scaliger's ; and for a spiteful picture, of that delightful and sacred character an antiquary, take that drawn by the little vicious Queen Ann's man :

But who is he in closet closely pent,
Of dreamy face with learned dust besprent ?
Right well mine eyes arede the myster wyght,
On parchment scraps y-fed, and Wormius hight.

One parting blow has the author of the *Tracts* at the poor biographer himself, whose antiquities he has so severely handled. He controverts, but *fails to disprove*, that Sir John Menteith was head of the house of Rusky ; he says, "due praise must be awarded the author of the *Memoirs* for his manly and spirited vindication of Sir John Menteith ;" and the praise he gives is this,—“the motive, therefore, for the defence of Menteith that has

inspired the learned author of the *Memoirs*, being, alas ! of an elusory kind, is somewhat akin to the veneration of the knight of La Mancha for his mistress,—or, to use a grander simile, like the fabric of a vision that leaveth not a wreck behind.”

But who would not be proud to resemble the gallant and high-souled Don, and would not be likened to him rather than to one Signor Bachelor Samson Carrasco, who went out to reclaim that memorable enthusiast, and was himself laid prostrate. But the Bachelor was more successful in his second crusade, and so may Mr Riddell be in a *rejoinder*. In the meantime, (to follow out his own illustration,) he of the *Memoirs* is, by right of conquest, entitled to dictate a penance to him of the *Tracts*. For a whole twelvemonth he shall go no more forth a picking pedigrees—or disenchanting genealogies—or rescuing charters in distress; but, putting off his antiquarian armour, and clothing himself in the humble habit of a repentant *peerage writer*, he shall perform a pilgrimage to Oxford, and there, at the shrine of the picture of the warlock, shall thrice proclaim in a loud voice to the assembled clerks and monks of Oxford, “The Inventor of Logarithms and Dr Richard Napier were brother’s sons.”



to a strange appeal to the attention of the public, involving a censure of the author for his ill-judged choice of a biographical subject in the Memoirs of Merchiston. "After all, however," (he exclaims,) "*it must still be remembered*, that the biographer of Merchiston, and his chief, are only Napiers in the female line; and it may be observed, that they perhaps might have a *better soil to work upon*, if they investigated into the descent of their *male* ancestors, the Scotts of Thirlestane; these Scotts, there is ground to conclude, are a branch of the Buccleuch family, from whom they may have sprung about the middle of the fifteenth century; and there is a historical incident connected with them that is singular and curious; they bear, as is well known, the double tressure, a part of the royal insignia, round their arms, with other additions, in consequence, as is said, of the striking loyalty of an ancestor to James V. which is commemorated by Sir Walter Scott."

Having delivered this admirable reason for preferring memoirs of Thirlestane to those of the Inventor of Logarithms, our antiquary notices the document in question, Pinkerton's remark upon it, and Lord Napier's reply. He then brings forward the following valuable record, which had been lost sight of by the family.

"The author some years ago discovered in his Majesty's State Paper Office a warrant by King William, under the sign-manual, dated 18th December 1700, which throws further light upon the subject, and shows under what title the high privilege alluded to is now enjoyed by the family. The authority sets forth that the Lyon had represented to his Majesty, 'That John Scott of Thirlestain, great-grandfather to Sir Francis Scott, now of Thirlestain, having assisted our royal progenitor James the V. King of Scotland, at Sautrey edge, with a troop

of launcers of his friends and followers, and was ready to march into England against the English then invading Scotland, his said Majesty, as a reward of his good and faithful service, authorised and gave warrant to his Lyon King of armes to give the said John Scott a bordure of flower-de-lis, siclike as in the royall bearing, a bundle of lances for his crest, and two men armed with jacks and steel bonnets, with lances in their hands for supporters. Of the truth of all which our said Lyon King of armes is fully satisfied from *good testimony*, and an *old inventory* of the writs and evidents of that family produced by him, wherein the foresaid warrant is fully deduced, but beiring that the principal wryt itselfe cannot be found, without which, or a new warrant under our royal hand, he is not at freedom to assign to the said Francis the double tressure, as born in our arms of Scotland; and wee being willing to gratify and honor the heirs and representatives of all loyall and valorous progenitors, and to bestow a mark of our royall favor upon the said Sir Francis Scott, for good and faithful services done, and to be done by him to us; therefore, we hereby authorize and order our Lyon King at armes, in our said ancient kingdom of Scotland, to add to the paternal coat of armes of the said Sir Francis Scott, a double tressure flowered and contre-flowered with flower-de-lis, as in our royal armes of Scotland, and to give him crest, supporters, and other exterior ornaments, as is above exprest, or as to him shall seem most proper.' **

The claim, then, had been investigated, and admitted by the proper and highest authorities in the year 1700. Nor could it be imagined that Mr Riddell, after his complimentary introduction to this proof, meant any thing

* Tracts, p. 140, *et infra*.

else than honour to Thirlestane. Not so, however. His aim in the whole of his tangled web of criticism is to leave the same species of imputation upon the *Thirlestane* quarters of the Merchiston armorial bearings, that he had previously attempted to cast upon the *Lennox* quarters,—namely, *suspitions* of falsehood, fraud, and wilful imposition against some person or persons unknown,—a most convenient mode of accusation, which neither commits him in a proof, nor renders him amenable to an individual. Accordingly, in the following somewhat flighty strain, he comments upon his own discovery.

“ It must be confessed, upon the whole, that there is *something suspicious* in this transaction. There was hence, more than a century ago, no proper warrant or authority for the alleged grant in 1542,—merely an *inventory* is referred to, and, *after all*, it is not likely that either *there* or *in a copy*, so palpable an error as was detected by Pinkerton,—and countenancing the idea of forgery—should have been committed. Independently, too, of the *unauthorized interpolation* of supporters in the grant in 1700, of which there is no mention in the supposed warrant in 1542, the wording of the latter may not be altogether satisfactory ; but, be this as it may, the homologatory act, or new concession, as it proceeds *directly from the sovereign*, must be held of itself to be quite sufficient, and fully to vest in the family the transcendent privilege in question. The use of these arms in modern times to which the late Lord Napier appeals, will not, therefore, prove the authenticity of the warrant in 1542, as that may be ascribed to an intervening circumstance, of which his Lordship was unaware. It would truly be curious, and perhaps no inferior test, to ascertain what were the armorial bearings of the Scotts

of Thirlestane immediately after 1542, and in the course of the sixteenth century. We thus *further find*, contrary to some absurd usages in modern times, that no part of the royal arms can be given to a subject without an express warrant from the Crown." &c.

It is difficult to say whether Mr Riddell intends, in the sentences quoted, to rate the good King William and his Lord Lyon, or merely to *tache* the shield of Thirlestane,—whether to stamp as a forgery the *old inventory* referred to in the royal renewal, or the *old warrant* referred to by Pinkerton,—and whether he really concedes to the family the right which he calls a transcendent privilege, but which in his view of the facts would confer very little honour. Is this a charge of forgery, or a defence against it? Does the author of the Tracts reject the idea of any blunder in *the inventory*? Does he mean to say that, in the inventory, or in a copy of that, it was that Pinkerton detected a palpable error? And how does he make out that a palpable error countenances the idea of forgery?

We have heard of an admirable attempt to forge a whole charter-chest, which for a time was successful. But the *splendide mendax* conception of manufacturing the Shakesporean papers, including complete plays newly discovered, was an effort, the anticipated reward of which might hold out a temptation, while the unparalleled genius of its execution all but justifies the lie. We have

* The production of a charter-seal of the family immediately after 1542, bearing the augmentation, would be excellent evidence of the grant; but the converse by no means holds, as various circumstances might have prevented the chief of Thirlestane, or some of his descendants, from affording that evidence of the grant. Ancient seals are not mentioned in the renewal as part of the evidence. I am not aware of any seal of the family extant of the date.

heard of subordinate agents forging documents to assist a *peerage claim* without the connivance of principals, and the temptation there, too, is manifest. But such acts of deceit, as are pointed at by Mr Riddell's suspicions, only *principals* could have a motive for perpetrating. Now to concoct an old seal,—for the sake merely of establishing a *male* descent from Lennox, where a *female* descent which carried the fief was already admitted,—or to forge a warrant of arms, merely to establish the loyalty of a border chief, would be a luxury of deception, requiring more credulity to believe, than that Merchiston is come of Tudor, or that John of Thirlestane had, like the Roman knight, sacrificed himself, his horse and his arms, to close up a yawning gulf of rebellion. I shall here quote *verbatim* the warrant in Lord Napier's charter-chest; for neither Nesbit nor Sir Walter Scott have given it with precise accuracy. The former has omitted certain clerical blunders in the body of the instrument, which are material in a question of forgery, and in the notes to the Lay, the date, and also the signature of the King's secretary are misprinted.

“ JAMES REX.

“ We, James, be the grace of God King of Scottis, considerand the faith and guid servis of of of right traist freind, John Scott of Thirlstane, qua cummand to our hoste at Sautra edge with three score and ten launcieres on horsback of his freinds and followers, and beand willing to gang with us into England, when all our nobles and others refused, he was readdy to stake all at our bidding, for the quhilk cause it is our will, and we do straitlie command and charg our Lion Herauld and his deputis for the time beand, to give and to graunt to the said John Scott ane border of fleure de lises about his coatte of armor, sic as is on our royal banner; and

alsua ane bundell of launces above his helmet, with thir words, Readdy ay Ready, that he and all his aftercummers may bruike the samine, as a pledge and taiken of our guid will and kyndnes for his treue worthines. And thir our letters seen, ye nae wayes failzie to doe. Given at Fala Muire, under our hand and privy cashet the xxvii. day of July, i^mv^c, and xxxxi zeires.

“ By the King’s Grace’s special ordinance,

“ THO. ARSKINE.

Indors.—“Edin. 14 January 1713, Registered conform to the Act of Parliament made anent probative writs, *per* M’Kaile, Pro^r. and produced by Alexander Borthwick, servant to Sir William Scott of Thirlestane. M’L. I.”*

If this be a forgery, it is a very strange one. Independently of the other considerations already offered, there are three facts which militate against such an idea. 1. The repetition *of of of* is the blunder of a *transcriber*, not of a forger; one *of* is probably a misreading for *our*. 2. The date is filled up in a different hand from the rest of the document, and is obviously an awkward attempt to copy ancient figurate expressions, which appear to be blundered, and were probably misread; a forger would have been more careful in this circumstance, and might have left the day of the month blank, as that frequently occurred in ancient authentic writs. The awkward imitation of the figures is the source, probably, of the blunder in the notes to the Lay of the Last Minstrel. 3. A privy-seal is mentioned, yet there is no seal attached to this document, nor is there the slightest attempt made to give the appearance of

* Mr Riddell does not print this document, but gives bits of it, in a sentence of thirteen lines commencing with a royal nominative that never finds a verb.—*See Tracts*, p. 141.

one ; a person feigning so deliberately would either not have mentioned a seal at all, or have given the indications, at least, of one. Moreover, this transcript (for it is obviously such) is written upon a small piece of parchment in a distinct old-fashioned hand, but possessing none of the characteristics of 1542, nor is the King's signature at the top at all like that of James V. This, too, must be observed, that King William's renewal makes no reference to it, but to *good testimony*, and an *old inventory* ; and it is registered thirteen years after the date of that renewal, having probably been ill transcribed from the inventory in a state of decay. The ancient writs and evidents of the family of Thirlestane are lost, and I have not been able even to discover the old inventory. Whether that mentioned the circumstance of supporters, which the transcript warrant does not, it is impossible to say,—we must in the meantime take the word of King William and his Lord Lyon for what Mr Riddell condemns as an “ unauthorized interpolation of supporters.”

When was the forgery committed ? why ? and by whom ? Was it Sir Francis Scott who did it, or caused it to be done ? He was a gentleman of unsullied honour, and high consideration in the country. Or does the charge of forgery point to some period more remote ?—haply to stalwart John of Fala himself, whom our anti-quary may picture

“ Now forging scrolls—now foremost in the fight,
Not quite a felon, yet but half a knight,
The gibbet or the field prepared to grace,
A mighty mixture of the great and base.”

It must be granted indeed to the learned author of the Tracts, that these moss-trooping Lords of St Mary in the forest were not immaculate, and a vague insinu-

ation or so of theft might have been more difficult to parry. But it was as "minions of the moon" that they sinned, and old Satchells tells us,

"Nightsmen at first they did appear,
Because moon and stars to their arms they bear."

Mr Riddell, we think, would have been much better employed in affording some elucidation of the interesting fact to which he slightly alludes,—that "the Scotts of Thirlestane, there is ground to conclude, are a branch of the Buccleuch family, from whom they may have sprung about the middle of the fifteenth century,"—than in his elaborate attempt to give weight to the hasty conjecture of Pinkerton. It is not in *ratiocination* from such premises that the learned antiquary is either valuable or formidable; but in his curious store of facts derived from a life devoted to genealogical researches. This cadency from Buccleuch is not recorded in the published genealogies of Thirlestane. It is on record, indeed, that Robert Scott of Thirlestane, Warden-depute of the west borders, and eldest son of the hero of Fala, married Margaret, daughter of Sir Walter Scott of Buccleuch, and sister of that noted Sir Walter who took Kinmont Willy out of the castle of Carlisle, and blew a blast of defiance from its battlements against the Queen of England. In that very achievement, and in all the border chivalry of the period, the name of Howpaslot and Thirlestane is identified with that of Buccleuch.

"Then lightened Thirlestane's eye of flame,
His bugle Watt of Harden blew;
Pensils and pennons wide were flung
To Heaven, the border slogan rung,
"St Mary for the young Buccleuch."

This marriage unquestionably gave to the Lords Napier, as Scott of Thirlestane, the lineage of Buccleuch ; but it would be still more interesting to prove that Thirlestane was originally a *male* cadet of that distinguished and romantic house.

All the genealogical accounts agree in this, and are corroborated by the records, that the Scotts of Thirlestane were in ancient times Scotts of *Howpaslot*. Their male lineage can be traced upwards from Lord Napier to Walter Scott of Howpaslot, whose name occurs in the records so early as 1493. Nesbit gives the descent of Howpaslot from an Arthur Scott of Eskdale, for whose existence I can find no authority. Walter Scott of Satchells, author of the curious metrical "History of the right honourable name of Scot," in whose rude pages may be discovered a germ or two of the polished Lay of the last Minstrel, repeatedly asserts that Walter Scott of Howpaslot was the son of William Scott, of the house of Buccleuch, which statement is perfectly consistent with unquestionable records. Satchells lived in the time of Sir Francis Scott, in whose person the armorial augmentation was renewed by King William. Sir Francis appears to have been a friend and patron of Satchells, who dedicates part of his book to him, and "To the truly worthy, honourable, and right worshipful Sir Francis Scot of Thirlston, Knight, Baronet, wishes earth's honour and Heaven's happiness." The poet, indeed, by his own account, was nearly related to his patron, for he says, in a short prefatory account of himself, "it is known that I am a gentleman by parentage, but my father having dilapidated and engaged the estate by cautionry, having many children, was

not in a capacity to educate us at school after the death of *my grandfather* Sir Robert Scot of Thirlstone; my father living in a highland in Esdail-muir, and having no rent at that time, nor means to bring us up, except some bestial, wherefore, instead of breeding me at schools, they put me to attend beasts in the field; but I gave the short cut at last, and left the kine in the corn, and ever since that time I have continued a souldier, abroad and at home, till within these few years that I have become so infirm and decrep'd with the gout, which hath so unabled me that I am not able to do the King nor myself service." In this state, and never having been able, as he tells us, either to read or write, he managed, by means of catching school boys for clerks, to record very minute genealogies of the numerous families of Scott, in an exuberant, fantastic, and sometimes romantic web of mingled verse and prose. Often his verse halts miserably, and is downright doggrel; there are times, however, when it flows as if he had watched the stars, as well as flocks in Esdail, with Spencer in his bosom.

" Oh! for a quill of that Arabian wing
That's hatch'd in embers of some kindled fire,
Who to herself herself doth issue bring,
And, three in one, is young and dam and sire.
Oh! that I could to Virgil's vein aspire,
Or Homer's verse, the golden language Greek,
With polished phrases I my lines would 'tire.
Into the deep of art my muse should seek;
Meantime amongst the vulgar she must throng,
Because she hath no help from my unlearned tongue."

Be this as it may, his genealogy of Thirlestane is very minute, and so far as I have tested it by records, appears to be essentially accurate. Of the hero of Fala-muir, (whose story, however, he does not narrate) he says,

“ And John of Thirlstone, that *brave fellow*,
 Was son to David Scot of Howpaslow,
 And David was the *first Sir Walter's son*.”

In another passage he says that the father of the first Sir Walter of Howpaslot was *William Scott of the house of Buccleuch*.

“ And David Scot, my author let me know,
 He was son to Walter of Howpaslow,
 Sir Walter he was *William's son*,
 Of the worthy house of Buccleugh *he sprung*.”

This latter is the link that has hitherto been unregarded, and it is important to verify it from the records.

There is a charter dated 21st November 1476, confirmed under the Great Seal in December following, from Robert Scott of Haining to Thomas Middelmast, the witnesses to which are, David Scott, eldest son and heir-apparent of David Scott of Branxholm, and *William Scott his brother*. This proves that David Scott of Branxholm, who sat in Parliament 1487 as *Dominus de Bucklewch*, and died in 1491, had a younger son of the name of William, who lived towards the close of the fifteenth century; and so far Satchells is corroborated. It remains, however, to connect Walter Scott of Howpaslot (whose name occurs in the public records from 1493 to 1513) with the above William of Buccleuch, by some evidence independent of the family bard and chronicler, whose genealogies become valuable and interesting when so corroborated and confirmed. David Scott, the elder brother of the above-mentioned William, died before his father, leaving a son Walter, who was served heir to his grandfather David, 6th November 1492.* Walter's name appears as one of the witnesses to the infertment

* Crawford quotes *charta penes Ducem de Buckclugh*.

of Queen Margaret in her jointure of the Lordships of Methven, Stirling, Ettrick, &c. in the year 1503. Thus far authentic records. Mr Douglas in his Peerage adds, and is followed by Mr Wood, that " he (Walter of Buccleuch) accompanied King James IV. to the fatal field of Floudon (1513,) where he remarkably distinguished himself, and, though he had the good fortune *to come off the field alive*, where he left many of his brave countrymen dead, yet he did not long survive it, but died in 1516." Such is the received history of this nobleman, which, however, rendered the following entry in the records of the High Court of Justiciary (a fertile source of border genealogies) somewhat perplexing. On the 19th November 1510, the *Lady* of Bukcleuche is summoned before the Court at Jedburgh as lawful surety of *Bel-de Robin Scot*, as she received him in indenture from the coroner, and not compearing was fined, and the said Robin denounced a rebel. This looks as if the Lord of Buccleuch had been in abeyance at the time, and the matter is explained by another public record, which certainly covers that sorely twitted class of authors, the peerage writers, with shame and confusion. In the records of the acts and decrees of the Lords of Council and Session, there is this entry, dated 2d May 1509; " anent the term assignit be the Lordis of Counsale till Walter Scot, *son and heir of umquhile Walter Scot of Bukcleuch, Walter Scot of Howpaslot*, TUTOR to the *sade Walter*, for the proving of the payment of i'lx angell nobill clamit on thaim and umquhile William Douglas of Drumlanris Knt. be Margrete Ker, the relict of umquhile John Huime." &c. Thus it appears that the Walter of Buccleuch, who is supposed to have distinguished himself at Flodden and escaped alive, was dead four years before that sad event, and had left a son, Walter, a mi-

nor. This Walter was served heir to his father 27th October 1517, which may have led to the idea that the previous Sir Walter lived to 1516, in which case of course he had not only escaped the carnage of Flodden, but distinguished himself there.

What is of more consequence, however, to the present considerations, is the evidence afforded by the expressions *tutor of Buccleuch*. This designation is well known to imply that the party was nearest *agnate* (kinsman to the pupil on the father's side) of the age of twenty-five years; and Walter of Howpaslot's relationship to Buccleuch can now be distinctly traced. *William Scott* we have already proved to have been the son of David, and the younger brother of another David of Branxholm and Buccleuch *grandfather* to this minor. Now, "Walter (of Howpaslot) he was *William's* son—of the worthy house of Buckcleugh *he* (William) sprung." Thus it would appear that Walter of Howpaslot was the nearest agnate, and tutor of Buccleuch, because he and the minor's father, Walter, were the respective sons of brothers, who were the sons of David Scott of Branxholm and Buccleuch.*

* Some years ago Mr Riddell communicated to myself the new genealogical fact, that he had discovered in some civil suit relative to the affairs of the young Buccleuch in 1509, that Walter Scott of *Howpaslot* was designed *tutor of Buccleuch*. The late William John Lord Napier delighted in his forest lineage; and this information, which tended to establish a lineal male descent from Buccleuch, was very interesting to him. I had merely noted, however, Mr Riddell's verbal communication, which was in the above terms, and the difficulty occurred to his Lordship as well as to myself that (following the peerage account) there was *no minor* Laird of Buccleuch in 1509. Mr Riddell having lately recalled my attention to the fact, by that solemn and somewhat mysterious appeal which has been quoted, (*supra*, p. 219.) I was induced to exercise my own ingenuity in discovering

I shall not follow Satchells through the genealogy of the family of Thirlestane, which he addresses to Sir Francis Scott, giving nine generations from Buccleuch, with the marriage of each, including Sir Francis himself, who, he says, "is now married to Ker, daughter to William Earl of Louthian;" and he concludes,

"Of his genealogy I said enough,
His original it is of Buckleugh."*

One of the most distinguished of this race was Robert Scott of Thirlestane, who was warden-depute of the west marches in the reign of James VI. He married Margaret of Buccleuch, whose mother was the Lady Margaret Douglas, eldest daughter of David seventh Earl of Angus, and niece to the Regent Morton. Margaret of Buccleuch was the sister of that noted Sir Walter Scott in whose person the family first became ennobled. The sons of this marriage of Thirlston, Robert, Walter, and William, were joined with their chivalrous uncle in the plot, execution, and consequence of that ever memorable adventure, which places an authenticated feat of border history on a level with the prowess of romance. No enchanted note from the castles of knight-errantry ever sounded with such thrilling effect, as did the real, sub-

the record containing the fact in question. Upon searching the Register-House very recently with that view, I discovered it (or a similar entry) in a volume of the *Acta Dominorum Concilii et Sessionis*, in the words and of the date quoted. The record contains nothing interesting beyond the above extract.

* He married, by contract dated 27th November 1673, Lady Henrietta Kerr, sixth daughter of William third Earl of Lothian, and represented the county of Selkirk in Parliament from 1693 to 1701, both inclusive. Their eldest son, Sir William Scott, married the heiress of Napier, by contract dated 15th December 1699, and their eldest son was Francis fifth Lord Napier, lineal male ancestor of the present Lord.

stantial, forest bugle of Buccleuch, when, in the month of April 1596, from the very walls of her strongest fortress, it challenged the might of England with "*oh wha dare meddle wi' me.*"

A long and minute narrative of this unparalleled rescue is given by Satchells, whose own father must have furnished him with the details, as he was of the select party who were with their chief at the storming of Carlisle. Among the few whom Buccleuch consulted in organizing the expedition was his nephew Sir Robert Scott of Thirlestane, but he refused to include him in the desperate adventure, or any of the heads of families where there were younger sons fitter to be "food for powder." Walter and William, the brothers of Thirlestane, were the two first men selected to compose this apparently forlorn hope. When, however, King James, after the achievement, sent Buccleuch upon an adventure which perhaps tried his nerves more than the former, namely, to make his own peace with the enraged queen of England,—the tigress Elizabeth,—Sir Robert Scott was his sole companion. Satchells says that a thousand gentlemen of the name of Scott, Maxwel, Johnston, and Hume, conveyed him over Tweed, and there took leave of him with great lamentations, expecting never to see the bold Buccleuch again. But he adds,

"Thirlston, Sir Robert Scot, bore his honour company,
No more there past with his honour along
But three domestic servants, and Sir Robert Scot had one."

They travelled on horseback, and the bard narrates the various stages and resting-places of their nine days ride to London. When they arrived,

"Notice came to the Queen that bold Buccleuch was there,
Then she left her private chamber and in presence did appear."

"How dared you do it?" said Elizabeth. "May it please

you Madam," answered the border chief, "I know not the thing a man dare not do,"—which reply proved how he could blow in a Queen's ear as well as upon his bugle.

Sir Robert Scott's eldest son was also Robert, who died, as Satchells tells us, before his father without issue. Sir Robert, by a second marriage, had other sons, but they became denuded of their inheritance in favour of the son of Walter, their father's brother. Sir Robert mortgaged the estate to Scott of Harden, and Patrick Scott of Tanlawhill had the fortune to redeem it to himself. Patrick's father was the Walter Scott whose death, in a mortal combat with John Scott of Tushielaw, is celebrated in that beautiful ballad, "The Dowie Dens o' Yarrow." Patrick, his son, was the father of Sir Francis whom Satchells addresses. The late Lord Napier, alluding to the dearth of Thirlestane papers in his own charter-chest, gives the following interesting account of the passing of the succession to his direct ancestor, "We are not Scotts of Thirlestane by *primogeniture*, but by purchase in the younger branch; and although we acquired the estate, it does not follow that the family papers came along with it. When Patrick Scott of Tanlawhill acquired the lands from Harden, and became Thirlestane, John Scott of Thirlestane, Sir Robert's son by his second wife, retired to Davington with the wreck of his fortunes, and perhaps his papers, among which may have been the original Fala grant of arms. We are not possessed of any of the old papers of Thirlestane. The estate was afterwards disputed, and finally settled in favour of Lord Napier about the year 1745. The Davington family fell into decay, and parted with that remnant of their estate I dont know when, but have heard they settled as farmers about Moffat, and what has come of them I know as little. I may add, that, a

few years ago, I met a beggar wife on the road near Thirlestane, and she told me she lived at Moffat, had a large family, and that her forebears had been *lairds of all the country about*. I asked for her husband,—unfortunately she never had one. Her name was Scott, and a descendant of the Davingtons. I lamented over my cousin, and dismissed her with a small present.”*

According to Nesbit the Davington family was in possession of a plate of lead bearing the ancient arms of Scott of Howpaslot and Thirlestane. He says, “The ancient armorial bearings of this family, described upon a very old plate of lead still extant in their possession is, on a bend, a mullet betwixt two crescents betwixt a bow full bent discharging an arrow in chief, and a hunting horn, garnished and stringed in base, which last figures have probably been added on account of some brave actions performed by the family.” But it is a remarkable confirmation of the origin of Howpaslot from Buccleuch, that this is precisely the ancient bearing of the latter, with the exception of the bow and arrow, which probably was the mark of cadency. The ancient Buccleuch arms are stated in a curious and interesting anecdote given by Satchells. He narrates, that Walter of Buccleuch, and Robert of Thirlestane, had been at school together at St Andrews in the year 1566; [1576?] that on their return, Buccleuch being just of age, and about to travel, was desirous to visit the tombs of his ancestors in the very ancient church, then a ruin in the forest of Rankleburn. He went there accordingly, accompanied by young Thirlestane, and Robert Scott of Satchells, the grandfather of the bard, from whose mouth he had the whole particulars. The earth and rubbish

* Letter to the author, dated Thirlestane, 23d January 1832.

were shovelled aside, and the tombstone disclosed, and swept clean, "where they did discern one stone which had the ancient coat of arms on it, that is to say, two crests (crescents) and a mullet borne on a counter scarf with *a hunting horn in the field*, supported with a hart of grace and a hart of leice; Robert Scott said that he believed that it was four hundred years since the last of these stones had been laid." It adds to the interest of the story, that these young antiquaries were, according to Satchells, the same Buccleuch and Thirlestane who in the year 1596, rode to London together to make their peace with Queen Elizabeth.

The extinction of the male representatives of the elder branch of Thirlestane is probable, but I have not investigated the subject. It is very interesting, however, because between such representative, and the present Lord Napier appears to rest the high genealogical pretension of being HEIR-MALE of BUCCLEUCH,—a distinction which I am not aware that any branch of the name can dispute with Scott of Howpaslot and Thirlestane.

Patrick Scott, the father of Sir Francis, was a great friend and ally of his kinsman, Walter second Lord Scott of Buccleuch, (son of the famous Walter,) created Earl of Buccleuch, Lord Whitcheater and Eskdale in 1619. This nobleman, after distinguishing himself in the service of Holland, died at London in the year 1633. Patrick Scott took charge of all his affairs, caused his body to be embalmed, and freighted a ship on the Thames to bring it to Scotland. Satchells, (in his narrative to Patrick's own son,) describes the extremities of shipwreck they suffered on the coast of Norway, how they were fifteen weeks on the voyage from London to Leith, and adds,

“ To all ages it should ne’er be forgot
 The pains that Patrick Scott of Thirlestane took,
 Æneas on Anchises he took pains enough,
 But Patrick Scott he took mere of the Earl of Buccleuch.”*

Sir William, the eldest son of Sir Francis and Lady Henrietta Kerr, was the last of the family of Thirlestane who retained the name of Scott. It seemed by a species of retribution that their name merged in that of Napier, for the Scotts of Bowhill, a branch of Thirlestane, murdered a brother of the Inventor of Logarithms, under circumstances discreditable to the chivalry of the borders. But the swan sings ere it dies; and just before the name of these unlettered “minions of the moon” was lost in that of Francis fifth Lord Napier, a tide of song flowed from his father Sir William that illustrates the letters of Scotland. His Latin poems, some of them humorous, others elegantly amatory, were published in a small volume at Edinburgh in the year 1727. He is therein eulogized by the editor Dr Pitcairn, and also by some contemporary poets, as among the very first in polite letters. But his more refined accomplishments were mingled with a vein of racy humour, which displayed itself sometimes in the mock gravity of a *carmen macaronicum*, of which we can only afford room for a single verse:

* Patrick Scott not only redeemed Thirlestane, but the more ancient property of Howpaslot, (which had previously wandered into the family of Scott of Birkinshire,) was recovered and restored to him by a first cousin of his own in 1658. Their ancient maxim and motto, “Best riding by moonlight,” was not favourable to the acquirement of steady habits of economy by these possessors of St Mary’s in the forest, to whom Satchells’ characteristic of Scott of Glack is not inapplicable,

“ Oh! the laird of Glack, he must not be omitted,
 Though he sold the land of Goldieland long e’er he got it.”

“ Per domum dansant tabulæ, cathedræ,
 Fitstules, furnæ, simul atque chistæ,
 Rusticam ducit leviterque dansam
 Armo Cathedra.”

And sometimes in a genuine Scottish rant, one of the most celebrated of which, though not published in his name, and vaguely ascribed to others, we here lay claim to, as a lay of the last of the lairds of Howpaslot and Thirlestane who retained the name of Scott.

“ Fy let us all to the bridal
 For there will be lilting there,
 For Jock’s to be married to Maggie,
 The lass with the gouden-hair,
 And there will be lang-kail and pottage,
 And bannocks of barley meal,
 And there will be good salt herring,
 To relish a kog of good ale,” &c.

Allan Cunningham, in his *Songs of Scotland*, doubtfully attributes this highly estimated gem (the whole of whose barbaric lustre we cannot venture to display) to Francis Semple of Beltrees, and says of it, “The company and their feast are beyond the reach of any art save poetry: even Wilkie could not paint fadges and brochan, and the rich odour which ascended from the bridal dinner; nor could Chantrey carve Madge, that was buckled to Steenie, nor Kirsh with the lily-white leg, and the strange way in which her misfortune befel.” But Mr Cunningham was by no means satisfied with the claim for Beltrees, which does not even rest on good tradition, and the following extract of a letter from him, dated 4th August 1832, in reply to a communication from Lord Napier on the subject, is interesting. “I have examined the paper which your Lordship had the goodness to leave with me, and I find my suspicions are confirmed respecting the claim made in behalf of Semple of

Beltrees for the authorship of our north country favourite, 'Fye let us a' to the bridal.' I always doubted the tradition, and now I find it rests on no authority which can destroy the family claim of the House of Napier. Your Lordship was the first who drew my attention to the sea side flavour of the feast, and to the north of Scotland sort of air of the words. I shall consider it in future as the lyric of a Napier, * unless some new light breaks in upon me. I have no doubt that the papers and memorandums of many noble families in the north contain matters curious both in manners and literature. I wish some one with courage and knowledge and fortitude would make the search," &c.

The information which the late Lord transmitted to myself on the subject is as follows : " Sir William Scott was author of that well known Scot's song, 'Fye let us a' to the bridal—for there will be liltings there,'—a better thing than Horace ever wrote. My authority was *my father*, who told me he had it from *his*, and that he had it from *his*, who was Sir William's son."†

Such are the most interesting particulars of which I am possessed regarding this border family. It has happened to the name of SCOTT,—whose characteristic in olden times was what William of Delorain said of himself,

" Letter nor line know I never a one
Were't my neck-verse at Hairibee,"

to become intimately connected with the greatest achievements in letters that have enlightened the world. The

* Scott it should be, but the retribution prevails.

† Letter to the author dated, Thirlestane, 15th December 1831. No tradition can be more satisfactory than this, considering how punctiliously accurate were the persons who compose the few steps of the transmission.

lineal male descendants of Walter Scott, the wild tutor of Buccleuch, are the lineal descendants of Napier of Merchiston, and bear his name and the honours of his family. From the Harden branch of Buccleuch springs Sir Walter Scott of Abbotsford.

The spot where the castle of Howpaslot stood was escaping from the memory of man, but a record of it is preserved in a very interesting letter written by the late Lord Napier, not long before he quitted Ettrick Forest, for ever.

“I have been,” he writes, “to explore the site of old Howpaslot, and will attempt to describe the scene. At the head of Borthwick Water,—a wild and sparkling stream which rises at the confines of Roxburgh and Dumfries, and in the parish of Robertson,—at the head of this water, formed of many rills and little torrents issuing from the clefts of the mountains, and beside one of them assuming the larger dimensions of a burn, there is still to be seen a row of cottages and out-houses, of the architecture of former ages, perched on a rocky promontory, and commanding a view up and down several of these mountain streams. An appearance of strength at once refers the origin of these humble dwellings to something of more importance, which is further indicated by an immense heap of ruins and lime rubbish, grown rank in the nettles, and encumbering the centre of the shepherd’s garden. All this, and the remnants of a wall at the extremity of the slope, are signs that once the mighty of the borderland had here their tower of strength, with their gray pease and curly kail, and may be the red red rose of the single leaf blooming for a few weeks at the foot of it. Narrow paths leading along the different openings of

the hills are still visible, and more particularly that towards Teviot-head, and so to the land of the Southern, from whence no doubt many a head of nolt have travelled to sustain the rieving landlords of the tower. Tradition points out a spot, between the garden and the burn, where the remains of some of these moonlight marauders cease from strife ; and the old shepherd remembers when, half a century bygone, the pointed ends of stones peering above the turf marked out the limits of their dark and narrow house. There are also to be discovered the foundations of an oblong building, like a chapel, which may very probably have been some place dedicated to the service of the church. The whole scene is wild, even grand, and here and there yet linger the remnants of that Forest which Sir Walter of Howpaslot aided to destroy.* But these are rapidly disappearing before the ravages of black-cattle, sheep, and time. The situation is well adapted to the enterprises

* The *Tutor of Buccleuch* was more or less of a maurader. By the records of the High Court of Justiciary, it appears, that upon the 21st November 1493, "Walter Scot of Howpaslot" was allowed to compound for *treasonable bringing in* William Scot, called *Gyde*, and other "traitors of Levyn," to the "Hereschip of Harehede." *Item*, for theftewously and treasonably resetting of Henry Scot, and other traitors of Levyn ; *item* for the treasonable stouthrief of forty oxen and cows, and two hundred sheep, from the tenants of Harehede. Upon the 11th December 1510, Walter Scot of Howpaslot, the laird of Cranstoun, and thirty-four others, were convicted of destroying the woods in Ettrick-Forest, and fined in 3 pounds each ; among the culprits were the Hoppringills of Smalham, Ker of Yare, *John Murray the Sheriff*, &c. Walter of Howpaslot, however, was not always the offending party. In the year 1494 James Turnbule, brother of the laird of Quithop, produced a remission before the High Court for art and part of the stouthrief of iron windows, (*fenistrarum ferrarum*) doors and *crukis* furth of the Tower of Howpaslot, pertaining to Walter Scot.

of a border chief, whether upon his own neighbour or the southern foe, for it commands a ready passage into Ettrick and Eskdale, Ewesdale and Teviotdale, and all the districts connected therewith. I got a hearty welcome from the shepherd and his wife, and an excellent repast of sweet-milk, and bread and cheese ; but not the least pleasing part of the picture was an artless browned-eyed lassie with the old man's cart driving in the winter's hay. In the corners and windows of the cottages I remarked several blocks of *freestone*, evidently the remains of the tower, and the gude-wife informed me that, within the last thirty years, many cart loads had been taken down the country for other buildings, and that she had broken up a great deal for scattering upon her floor. So much for departed strength. The situation of Howpaslot had escaped even the observation of the great border magician himself. And he, too, now sleeps with his ancestors ! I attended his funeral, and perhaps my own name will thereby be handed down to latest posterity.”*

It is a singular circumstance, that while the foregoing pages were in the progress of printing, an old soldier, who had not the slightest idea that any notice of the family of Scott was about to be published, addressed a letter to me, requesting professional advice relative to a legal claim upon the property of Davington, which he hoped to recover. This correspondent, who signs himself *William Scott*, turns out to be the lineal heir-male of the eldest branch of Howpaslot and Thirlestane. His letter, which he permits me to add to these anecdotes of his family, speaks for itself, and so much shall be extracted as, by an extraordinary coincidence, happens to

* Letter to the author, dated Thirlestane, 15th October 1832.

bear, though unconsciously to the writer of it, directly upon the subject in hand. It is dated, "Lennoxton near Longtown, Cumberland, 19th May 1835," and informs me as follows :

"I served in the 90th Regiment from 11th May 1794 to 10th December 1817, a period of twenty-three years and nine months, the whole time with Major-General Mark Napier, who, I presume, is your relation.* In the year 1833, the late and much to be lamented the Right Honourable William John Lord Napier of Merchiston, Thirlestane, &c. took much pains and trouble to find out if there was in existence any of the lineal descendants of the original Scotts of Thirlestane, Howpaisley, &c. and where to be found. Upon this rumour in the country I wrote to his Lordship, who was then in London, sending him my genealogy up to Robert Scott of Davington, my great-grandfather. His Lordship immediately acknowledged my letter in a manly and disinterested manner, subscribing himself a 'faithful kinsman,' and requesting to continue the correspondence, and to give him all the information in my power of the family of Davington, as the representative of the original Scotts of Thirlestane was to be found in that family. He frankly said he was well aware he belonged to the younger branch, as Patrick of Tanlawhill and Sir Robert were cousins-german. I am lineally descended from Sir Robert Scott and Catherine Jardine of Jardine Hall, from father to son. It is Sir Robert's *second* marriage I mean. Scott of Harden's daughter was Sir Robert's *first* wife, and their son, the heir of Thirlestane, was murdered, for which my progenitor

* The author's paternal uncle ; a Scott of Thirlestane, who had thus unconsciously commanded his chief for so long a period.

kind as take every thing into your consideration, and, like your noble kinsman, acknowledge my letter, with your opinion on the business. During a long and active service in the four different quarters of the globe, I never yet disgraced the name of Scott. I hope my poverty will not prevent your causing this letter to be answered."

This interesting letter, which also contains a schedule of the writer's genealogy, with the marriages, and dates of births and deaths, recalled to my recollection a circumstance not adverted to in the notice of the Scotts previously prepared for the press. At the time of the late Lord Napier's departure for China, I received a letter from his young son, the present Lord, dated, Thirlestane, 9th January 1834, in which he says, "Immediately on our arrival here my father sent for all the tenants, and people round about, who bade him good-bye ; many were greatly grieved, even to the shedding of tears. He started the very next morning at six o'clock. Not long after there came a man here who said his name was Scott, and that he was chief of the name, which sounded preposterous enough at first, but he showed letters from my father inviting him to come here ; the poor man was sorely disappointed at his having gone. In truth, this is a worthy representative of the family of Scott, being a tall, stout, brawny, bony fellow."

I have no doubt, from the information his letter affords, that William Scott's genealogy can be distinctly proved, and that in this old soldier, this second Satchells, we have the heir-male of Buccleuch. In another letter from him dated 28th May 1835, being his reply to my answer to his first, he gives the details of an anecdote, new to me, and which, as it is now beyond the cognizance of the High Court of Justiciary, and fairly be-

longs to the romantic records of the name of Scott, I shall give here precisely as communicated to me.

“ Before I speak of the affair of Davington, I will explain to you the affair of the murder of the heir of Thirlestane, who was Sir Robert Scott’s son by his first wife. She was Sir William Scott of Harden’s daughter. After her death he grew up, and had every appearance of a promising young man, and as soon as he became of age he was to be married to a lady of a very noble and ancient family. A house was built at Gamescleuch ; it lies on the south side of the Ettrick, opposite Thirlestane ; I have seen the ruins. He was in the habit of going there in company with a man of the name of Lawley, who was a piper to Sir Robert’s family, and carried refreshment to the workmen who were employed to finish the building for the reception of the heir and the lady as soon as they were married. Be so kind as remark here, Sir Robert Scott was married again to his second wife, and had a family by her, coming up ; her name was Catherine Jardine of Jardine Hall in Applegarth parish ; she is my progenitor, and mother to the Scotts of Davington. But, one day he was going over and ordered Lawley to provide two bottles of wine he was going to give the workmen. That base menial took two bottles, one mixed with strong poison, and when he ordered a glass to be filled for him, that William Lawley filled it out of the poisoned bottle. He drank to the workmen ; the poison is recorded to be so strong that he expired instantly, and I am creditably informed the body burst in an hour. At the same time the Scotts of both families were beginning to assemble to hold his birthday, which was at hand. His sudden death caused so much confusion that the murderer got away, and is sup-

posed to have got into the Highlands. He never was heard of more," &c.

After this sad event, it seems that Sir Robert the father gave himself up to sorrow, and his fortune became involved with Scott of Harden and others. Patrick Scott (the great-grandfather of Francis fifth Lord Napier) who redeemed Thirlestone to the junior branch, was the eldest son of that gallant Walter of Gamescleuch already-mentioned, who escaped the desperate adventure of Carlisle, to fall by the hand of Tushielaw.

Late at e'en, drinking the wine,
And ere they paid the lawing,
They set a combat them between
To fight it in the dawning.

* * * *

She kiss'd his cheek, she kaim'd his hair,
As oft she had done before, O,
She belted him with his noble brand,
And he's away to Yarrow.

* * * *

She kiss'd his cheek, she kaim'd his hair,
She search'd his wounds all thorough,
She kiss'd them, till her lips grew red
On the dowie houns of Yarrow.

"Now, haud your tongue, my daughter dear!
For a' this breeds but sorrow,
I'll wed ye to a better Lord
Than him ye lost on Yarrow."

"O! haud your tongue, my father, dear,
Ye mind me but of sorrow,
A fairer rose did never bloom
Than now lies cropp'd on Yarrow."*

* This tragic story is the prototype of Hamilton of Bangour's
"Busk ye, busk ye, my bonny bonny bride."

But for no untimely death has the Forest such cause to mourn as for that of the late Lord, the lineal male representative of this Walter of Gamescleuch. It was under his immediate patronage, and owing to his enterprising exertions, that the pastoral society was there instituted in the year 1818, the benefit of which is now acknowledged and shared by the neighbouring counties of Peebles, Roxburgh, and Dumfries. With the same views his Lordship composed and published an octavo volume of 280 pages, entitled, "a Treatise on Practical Store-farming, as applicable to the mountainous region of Ettrick Forest, and the pastoral district of Scotland in general;" a work which eminently illustrates his capacities, no less than his dispositions. The New Statistical Account of Scotland thus speaks of him: "In this parish (of Yarrow in the Forest,) the truly patriotic and benevolent Lord Napier has his usual residence. This nobleman, to use the words of a popular writer, has for some years past employed his time and talents, together with much money, in improving the stock on the hills, and introducing, into a district hitherto bound up in its own natural wildness, all the attributes and amenities proper to the most civilized regions. His enthusiasm has been one of benevolence, and from the full half of the beautiful cottages he has planted in this wilderness, the prayers of the widow and the orphan nightly ascend to Heaven." But not the least interesting testimony in his favour is that of the *Ettrick Shepherd*, in his Statistics of Selkirkshire, published in the Quarterly Journal of Agriculture. "The roads and bridges," says Mr Hogg, "were never put into a complete state of repair till the present Lord Napier settled in the country; and to his perseverance, Ettrick Forest is indebted for

the excellence of her roads, now laid out and finished in every practicable direction. With an indomitable spirit of perseverance, he has persisted against much obloquy and vituperation, and from none more than the writer of this article. But honour to whom honour is due; Lord Napier has effected wonders, and the late impervious Ettrick Forest may compare in the beauty and efficiency of her roads with any mountainous district in the united kingdom."

This nobleman, with all these practical powers and habits, possessed in no small degree the literary taste and accomplishments by which Sir William Scott, and others of his modern ancestors were distinguished. A manuscript in my possession, dated H. M. S. Kent, off Toulon, 24th September 1811, and entitled,—“The Sailor’s midnight Burial, written by Captain the Honourable William John Napier, on reading the funeral service over the body of a sailor at midnight during a thunder storm,”—affords one of many interesting illustrations of the depth of his feelings, and his powers of expressing them:—

“ Dark and dismal is the hour,
Midnight waves prepare the tomb,
Fearful is the shooting star
Glist’ning through the dreary gloom ;
Vivid flashes in the sphere
Light for him the angry wave,
Thunders rolling o’er the deep
Seal him in the wat’ry grave ;
Whistling winds among the shrouds
Chilling blasts of terror blow,
Yawning wide the foaming surge
Wraps his corse descending low ;
Glorious shall he rise again
When the sea gives up her dead—”

He inherited, too, all the daring of the warlike races united in his person, and his professional claims upon the remembrance of his country are not slight.* For he served on board the *Defence* at Trafalgar, when she captured the *St Ildephonso*, and carried the prize into Gibraltar. He served on board the *Foudroyant*, and the *Imperieuse*, Lord Cochrane, who, in his *Dispatches* of 7th January 1807, published in the *London Gazette*, noticed the Honourable Mr Napier as having distinguished himself among those detached in boats who landed on the French coast and attacked and demolished Fort Roquette the preceding day. He commanded a boat of the *Imperieuse* which, with another, took at mid-day a privateer mounting eight guns, and having on board fifty-four men, 14th November 1807; in his boat ten, including himself, were wounded, and two killed. He assisted in cutting out of the bay of Almeria, within half gun-shot of upwards of fifty cannon, a French letter of marque of ten guns and fifty men, besides two Spanish brigs of four guns, and a large settee 20th February 1808. He was sent to conduct an unarmed vessel, detained by the *Imperieuse*, to Gibraltar, but was taken on the passage by a privateer from Mahon, 3d April 1808, and carried into Ivica, where he remained a prisoner for three months. He was released when the Spaniards began to throw off the French yoke, and afterwards assisted in the defence of Fort Trinity, and at the siege of Roses. He was on board the *Imperieuse*, 12th April 1809, when the *Calcutta* was taken, —and was again wounded in the attack at Palamos, un-

* It ought not to be omitted, that his Lordship was President of the Astronomical Institution of Edinburgh,—an Institution whose present prosperity is mainly owing to his enthusiastic exertions.

der the command of Captain Fane of the Cambrian, 14th December 1810. Through this gallant career of his youth he escaped to effect, in his own peaceful and pastoral district, those improvements and amenities by which his name is endeared to Ettrick Forest, and will long be remembered there. After all, it was his fate suddenly to quit his home for that distant land, where, in the service of his country, but under circumstances which it belongs to that page in the history of British policy to record, he died on the 11th of October 1834.



ADDENDA.

SIR JOHN MENTEITH OF RUSKY, *supra*, p. 21.

IN the Appendix to the Memoirs of Merchiston there is a reply to Mr Tytler's controversial note in his History of Scotland regarding Sir John Menteith, prefaced by the following sentence: "The family of Rusky, the honours of whose eldest coheiress descended to Napier, flowed from Sir John de Menteith, second son to Walter Earl of Menteith, who was third son of Walter, High Steward of Scotland. This lineal ancestor of our Philosopher has been most groundlessly malign-ed, and to remove an idle calumny from the honourable house of Menteith is to clear history of a blot and a fable." The object of the historical examination being, as said, to remove an idle calumny from the family of Menteith, a coheiress of which family the Inventor of Logarithms unquestionably represented, it matters little to the propriety of its insertion in the Memoirs, whether the Sir John Menteith in question was the lineal ancestor of our Philosopher or not. His lineal ancestor, Walter Menteith of Rusky, Thom, &c. was undoubtedly the son of a Sir John Menteith, for there is a charter "*Murdaci Comitiss de Menteth, filius Domini Alexandri Comitiss de Menteth terrarum de Thom in Comitatu de Menteth, Waltero de Menteth, filio quondam Domini Johannis de Menteth.*" Upon a chronological consideration of the matter, nothing is more natural to suppose than that Sir John Menteith, mentioned above as Walter's father, was

the Sir John in question. It is not impossible, however, that Crawford the Peerage writer may be accurate in saying that Sir John, the father of Walter of Rusky, was the son of Earl Alexander, and consequently the brother, instead of the uncle, of Earl Murdac who grants the charter of Thom to Walter. I was not prepared, however, to accede to this latter theory, for the best edition of the Scottish Peerage (Mr Wood's,) gives the Rusky genealogy as adopted in the Memoirs, which appears to be consistent with chronology, and in the laborious antiquarian history of Stirlingshire, both Mr Nimmo, and the Rev. Mr M'Gregor Stirling who so ably re-edited the work, state without any expression of doubt that Menteith, the maligned, who was the brother of Earl Alexander, was Sir John Menteith of *Rusky*. Mr Riddell would have conferred an obligation had he substituted a certain and accurate descent while he disproved this. But he has done neither one nor other. He proves that Sir John Menteith, the maligned, was at some period of his long life married to Elyne Mar, whose male issue failed, and upon this solitary fact he triumphs as having utterly annihilated the Rusky genealogy. Without pausing to investigate this matter more closely, which requires illustration, we may venture to remind the author of the Tracts that, although it be not allowable hastily to *assume* a second marriage for the mere purpose of founding a new genealogy, yet, on the other hand, a received genealogy, founded on the plausible evidence to which we have pointed, is neither destroyed nor disturbed by proving a *separate* marriage previously unknown. Under the circumstances, the inadmissible assumption is on the part of the author of the Tracts. Sir John Menteith married Elyne Mar who had no male representative,—*ergo*, Sir John Menteith (Walter's father) of the same chronology, of the same family, and admitted in the best genealogical histories to be the same man, could not have been the same man, because the presumption is against his having been twice married. Such is Mr Riddell's reasoning on this matter, upon which he grows so merry as to enact the Bachelor Samson Carrasco against the author of the Memoirs, whom he likens to Don Quixote. But he must get a better horse, and new armour, and try it again.

Equally unfortunate is our antiquary's *heraldic* excursus against the author of the Memoirs. We had said that Sir George Mackenzie and Nesbit hastily and unscientifically assumed that Napier of Merchiston's *Lennox* shield displayed the *sole* arms of Elizabeth Menteith, who was coheiress and representative of her father's distinguished family of Menteith, as well as of the Lennox, and who, therefore, must rather be supposed to have carried some insignia of Menteith, in conjunction with Lennox. The instances which the learned author of the Tracts adduces to overbear this view are, that of the Duchess-Countess of Sutherland, who suffers her inferior descent from Adam Gordon to be *armorially* lost in her Comitatus of Sutherland; and the other instance is that of the *heir of line of the royal family of Spain*. These *tremendous* examples do not prove it to have been likely that when Elizabeth Menteith succeeded to a quarter of the Lennox, but without taking up the title, and to half of the Rusky estates, she discarded all insignia of Menteith, the name she bore. "If the learned gentleman had looked round for a moment," he would have seen that Haldane of Gleneagles actually quartered the armorial bearings of the *other sister*, and they were *Lennox*, and a *bend cheque* for *Menteith*.

Before leaving this subject we must advert to what Mr Riddell terms his "corroborations" of the author's "laudable vindication of the character of Sir John Menteith." We maintain that that vindication requires no corroboration, being *in seipso totus teres atque rotundus*, and the best proof is, that when our learned antiquary attempts to improve it he only *repeats* it. He mentions, indeed, that Sir John Menteith received from Bruce an augmentation of arms, but the author had shown, *ex abundanti*, Menteith's favour with Bruce. He runs over the facts that Menteith was less unpatriotic than the other Scottish nobles, and that he distinguished himself, from the earliest opportunity in his power, as a patriotic adherent of Bruce. All this the author had discussed *ad nauseam*. The "corroboration" is, probably, what Mr Riddell puts in Italics; thus,— "What is even more remarkable, he alone of all his family, and indeed of the barons and nobility of Scotland, *is not to be found*

in the lists of those who swore fealty to Edward I." Now the author had stated the same thing thus:—"So far from there being the slightest evidence that he was among the first to bend to the conqueror, his name does not occur in that degrading document the *Ragman Roll*." Corroborations, indeed! "Call ye that backing of your friends?"

FINIS.

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